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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FEDERAL RESERVE SYSTEM

### 5 CFR Part 6801

RIN 3209-AA15

### Supplemental Standards of Ethical Conduct for Employees of the Board of Governors of the Federal Reserve System

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Final rule; amendment.

**SUMMARY:** The Board of Governors of the Federal Reserve System, with the concurrence of the Office of Government Ethics (OGE), is amending the Supplemental Standards of Ethical Conduct for Employees of the Board. This amendment would: eliminate the general prohibition on ownership of stock in primary dealers for most Board employees; and expand the availability of stock ownership waivers by allowing waivers to be granted permitting Board employees to retain bank stock acquired prior to Federal Reserve employment if the stock does not present a conflict of interest with the employees' duties.

**EFFECTIVE DATE:** December 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Cary Williams, Managing Senior Counsel, Legal Division, Board of Governors of the Federal Reserve System, telephone 202/452-3295, FAX 202/452-3101. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins, 202/452-3544.

**SUPPLEMENTARY INFORMATION:** 5 CFR 2635.105 authorizes executive agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. On October 16, 1996, the Board, with OGE's concurrence, published in the **Federal Register** a final rule to establish supplemental standards of ethical conduct for Board employees (61 FR

53827-53830), effective November 1, 1996.

The Board, with OGE's concurrence, now amends its supplemental standards in two respects:

First, the amendment modifies the prohibition against ownership of stock in primary government securities dealers to apply only to Board employees who have ongoing access to highly sensitive information (Class I) collected in connection with Federal Open Market Committee (FOMC) deliberations and decisions, and identified as such by the FOMC Committee. The Board believes that the current prohibition of share ownership in primary dealers for all Board employees is unnecessarily broad and that the prohibition properly should be extended only to those employees where the possibility of the appearance of a conflict of interest occurs. For that reason, the Board is retaining but liberalizing this provision, so as to allow such share ownership except for those Board employees who have ongoing access to Class I FOMC information.

Second, the amendment explicitly provides for waivers to be granted permitting Board employees to retain bank stock acquired prior to Federal Reserve employment if the stock does not present a conflict of interest with the employees' duties. The current regulation states that waivers may be available if ownership or control was acquired through inheritance or gift, as a result of a merger or other change in corporate structure, or otherwise without specific intent of the employee, spouse or minor child to acquire the interest. The purpose of the amendment is to make clear that new Board employees need not, in every case, divest banking organization stock previously acquired, and that a waiver may be available if a new employee is not involved in bank regulatory matters. This revision would not change the existing prohibition on any current employee (or an employee's spouse or child) purchasing stock in a depository institution or its affiliate (except in the case of a spouse in compensation for the spouse's employment).

### Matters of Regulatory Procedure

#### *Administrative Procedure Act*

Pursuant to 5 U.S.C. 553(a)(2), (b) and (d), the Board has determined that good cause exists for waiving the regular

notice of proposed rulemaking, opportunity for comment, and 30-day delayed effective date as to this final rule amendment. This action is being taken because it is in the public interest that this rule, which concerns matters of agency organization, practice and procedure and which relieves certain restrictions placed on Board employees, become effective on the date of publication.

### Regulatory Flexibility Act

The Board has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects Board employees and their families.

### Paperwork Reduction Act

The Board has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

### List of Subjects in 5 CFR Part 6801

Conflict of interests, Government employees.

Dated: November 23, 1999.

**Jennifer J. Johnson,**

*Secretary, Board of Governors of the Federal Reserve System.*

Approved: November 30, 1999.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System, with the concurrence of the Office of Government Ethics, is amending 5 CFR part 6801 as follows:

### PART 6801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 6801 continues to read as follows:

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 244, 248; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.502, 2635.803.



2. Section 6801.103 is amended by:  
 a. Revising paragraph (a)(2);  
 b. Redesignating paragraphs (c)(1)(i) and (c)(1)(ii) as (c)(1)(ii) and (c)(1)(iii), respectively; and  
 c. Adding a new paragraph (c)(1)(i).  
 The revision and addition read as follows:

**§ 6801.103 Prohibited financial interests.**

(a) \* \* \*

(2) A primary government securities dealer or any of its affiliates, if such employee has regular, ongoing access to Class I Federal Open Market Committee information.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Prior to Federal Reserve employment;

\* \* \* \* \*

[FR Doc. 99-31726 Filed 12-7-99; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 235

[INS No. 2026-99]

RIN 1115-AF60

#### Extension of 25-Mile Limit at Select Arizona Ports-of-Entry

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations to extend the distance Mexican nationals may travel into the United States without obtaining additional immigration documentation at selected ports-of-entry (POEs) along the United States and Mexico border. The selected POEs are located in the State of Arizona at Sasabe, Nogales, Mariposa, Douglas, and Naco. Once visitors to Arizona meet the inspection requirements of legal entry to the United States, they will be able to travel within the 75-mile border region of Arizona. This rule is intended to promote commerce in the southern Arizona border area while still ensuring that sufficient safeguards are in place to prevent illegal entry to the United States.

**DATES:** *Effective date:* This interim rule is effective December 8, 1999.

*Comment date:* Written comments must be submitted on or before February 7, 2000.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 2026-99 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Morris, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone (202) 305-2970.

#### SUPPLEMENTARY INFORMATION:

##### What Change Is Being Made by This Rule?

This interim rule amends 8 CFR 235.1(f)(1) by extending from 25 to 75 miles the distance Mexican nationals who meet the inspection requirements for legal entry at selected POEs in Arizona along the United States and Mexico border may travel into the United States without obtaining additional immigration documentation. The selected POEs are located in the State of Arizona at Sasabe, Nogales, Mariposa, Douglas, and Naco. Mexican nationals admitted at these POEs may travel in Arizona within 75 miles of the border without obtaining Form I-94, Arrival and Departure Record, and may remain in the United States for a period not to exceed 72 hours. Mexican nationals admitted as nonimmigrant visitors at the Mexican border POEs in the State of Arizona at Sasabe, Nogales, Mariposa, Naco or Douglas for a period not to exceed 72 hours, may also travel within 25 miles of the border in the State of California, New Mexico and Texas as long as they remain within 25 miles of the border while in those states.

##### What Are the Current Requirements for Mexican Nationals Entering the United States?

Since 1953, Mexico and the United States have agreed to make special accommodations for Mexican nationals who cross the border into the immediate border area to promote the economic stability of the region. The Service has helped promote border commerce by permitting travel within 25 miles of the boundary for less than 72 hours without additional documentation other than that needed to be admitted to the United States. Frequent Mexican visitors may obtain and use border crossing identification cards (BCCs) such as the Service-issued Forms I-186 or I-586,

Mexican Nonresident Alien Border Crossing Card, and Form DSP-150, B1/B2 Visa and Border Crossing Card, issued by the Department of State and commonly called the "Laser Visa" (see 8 CFR part 212.6). BCCs allow qualified persons who frequently cross the United States and Mexico border to be admitted to the United States more quickly and without further documentation while still preserving the integrity and security of the admissions process. Current regulations also require Mexican nationals who seek to enter the United States for more than 72 hours, and/or to travel farther than 25 miles from the United States and Mexico border to obtain Form I-94.

##### Why Is the Service Making This Change?

With passage of the North American Free Trade Agreement in 1994, commerce, travel, and tourism across the United States and Mexico border into neighboring communities have increased the economic interdependence of cities located in the border area.

Currently Sonora, Mexico, and the State of Arizona form one of the fastest growing cross-border regions. However, unlike the other border States, Arizona has no large city within the Service-defined zone of 25 miles. The first large city from the border in central/southeastern Arizona is Tucson which is about 55 air miles from the United States/Mexico border and from 60 to 75 miles away from the five nearest POEs. According to the current regulations at 8 CFR 235.1(f)(1) a Tucson-bound Mexican businessperson, tourist, or shopper must acquire additional documentation just to engage in the same routine activities that occur daily at every other major crossing point along the border. These routine legal border crossers have to spend additional time at the POE to obtain a Form I-94 and must pay a fee of \$6.

To address concerns from city officials in Tucson, surrounding communities, travelers in southern Arizona, and trade organizations such as the Border Trade Alliance, by this rule the Service will extend the distance limit to 75 miles within Arizona. A businessperson, tourist, or shopper will still be required to meet all the requirements for legal entry into the United States. The city of Tucson estimates that this change in the distance limit will greatly expand commercial activity in the city and in smaller towns between Tucson and the border. The city of Tucson conducted a study indicating that, after implementation of this rule, the

commercial gain from Mexican visitors is estimated to reach \$56.3 million a year.

#### **How Can Mexican Nationals Travel Beyond the 75-Mile Limit or Stay in the United States for Longer Than 72 Hours?**

The change announced in this rule does not apply to a Mexican national who intends to go beyond the 75-mile limit in Arizona or who wishes to stay in the United States for more than 72 hours. In such a case, the Mexican national must obtain a Form I-94 and pay the \$6 fee, in accordance with existing requirements.

#### **Does the Service Intend To Expand the 25-Mile Limit at Other United States and Mexico Border POEs?**

The Service believes that this regulatory change responds to the unique circumstances of central/southeastern Arizona. There is currently no plan to test this approach elsewhere along the Southwest Border where cross-border commerce appears to occur routinely within the existing 25-mile regulatory limit.

#### **How Will This Rule Affect the Border Patrol and Other Enforcement Operations?**

Once this interim rule takes effect, the Service will monitor and evaluate any changes in the patterns of violations of terms of admission that may occur. In addition, the Service shall monitor data on apprehensions of those Mexican BCC holders who do not have an approved Form I-94 and who violate their terms of admission by remaining in the United States for more than 72 hours or who travel beyond the 75 mile limit set by this rule.

#### **What Fiscal Impact Will This Rule Have on the Service?**

The Service estimates that this rule will eliminate the need for Mexican nationals to obtain approximately 50,000 Forms I-94 annually, at a cost to them of \$6.00 per form. The annual loss of approximately \$300,000 in revenue to the Service will be partially offset by the reduction in traffic congestion at the affected POEs, the facilitated entry of a greater percentage of travelers, and the elimination of Service staff time required to issue those Forms I-94.

#### **Good Cause Exception**

Implementation of this rule as an interim rule with an immediate effective date and with provision for post-promulgation public comments is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(1).

The reasons for immediate implementation of this interim rule are as follows: This rule removes a restriction on travel within the State of Arizona for Mexican nationals who meet all the requirements for legal entry into the United States. The removal of this restriction is intended to facilitate travel within the State of Arizona, and to expand commercial activity in Tucson and in smaller towns between Tucson and the United States and Mexico border. Delaying the elimination of this restriction would be unnecessary and contrary to the public interest.

#### **Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The city of Tucson estimates that the change in regulation will greatly expand commercial activity in the city and in smaller towns between Tucson and the border. City officials estimate the commercial gain from Mexican Visitors will reach \$56.3 million a year. Although this rule will likely have some economic impact on small entities, the impact should not be substantial. This rule is intended to increase commercial activity for small and large entities in the United States.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. The rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **Executive Order 12866**

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

#### **Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### **Executive Order 12988 Civil Justice Reform**

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

#### **List of Subjects in 8 CFR Part 235**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 235 of chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

#### **PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION**

1. The authority citation for part 235 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 235.1 is amended by:
  - a. Revising paragraph (f)(1)(iii);
  - b. Removing the period at the end of paragraph (f)(1)(iv), and adding in its place "; or" and by
  - c. Adding a new paragraph (f)(1)(v), to read as follows:

##### **§ 235.1 Scope of examination.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(iii) Except as provided in paragraph (f)(1)(v) of this section, any Mexican national who is exempt from a visa and passport pursuant to § 212.1(c)(1) of this chapter, or who is in possession of a passport and valid visa who is admitted as a nonimmigrant visitor for a period

not to exceed 72 hours to visit within 25 miles of the border;

\* \* \* \* \*

(v) Any Mexican national who is exempt from a visa and passport pursuant to § 212.1(c)(1) of this chapter, or is in possession of a passport and valid visa who is admitted as a nonimmigrant visitor at the Mexican border POEs in the State of Arizona at Sasabe, Nogales, Mariposa, Naco, or Douglas for a period not to exceed 72 hours to visit within the State of Arizona and within 75 miles of the border.

\* \* \* \* \*

Dated: December 2, 1999.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 99-31694 Filed 12-7-99 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-323-AD; Amendment 39-11456; AD 99-25-13]

**RIN 2120-AA64**

#### **Airworthiness Directives; Boeing Model 777-200 and -300 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 777-200 and -300 series airplanes. This action requires revising the Limitations Section of the Airplane Flight Manual to prohibit the dispatch of certain airplanes under certain conditions. This amendment also requires repetitive inspections to ensure correct operation of the backup generators; and, for certain airplanes, a one-time inspection to detect damage of the engine external gearbox; and corrective actions, if necessary. This amendment is prompted by reports of inflight shutdowns due to sheared backup generator shafts. The actions specified in this AD are intended to prohibit the dispatch of an airplane with an engine-mounted backup generator having a sheared shaft; and to detect and correct damage to the engine, which could result in inflight shutdowns.

**DATES:** Effective December 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 23, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 7, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-323-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2681; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports of two recent inflight engine shutdowns that were initiated by a failure of the engine-driven backup generator (including a sheared shaft), and consequent failure of the engine gearbox oil pump due to contamination from the damaged backup generator drive bearing in the engine gearbox. Most backup generator shaft shear events are the result of leaking driveshaft seals, or improper servicing of the backup generator during maintenance. The current Model 777 Master Minimum Equipment List allows airplane operation for up to 10 days with a failed backup generator shaft. Both inflight shutdowns occurred on Boeing Model 777 series airplanes equipped with Rolls-Royce Trent 800 series turbofan engines. However, the FAA has determined that the same unsafe condition may also occur on General Electric GE90 and Pratt & Whitney PW4000 series turbofan engines, since the same backup generators are installed on airplanes having these engines.

Investigation continues in determining the exact reason for the backup generator shaft shear events and consequent engine failures. However, the FAA considers that improper servicing of the backup generator oil system could be a contributing factor.

Consequently, improper servicing or improper replacement of the backup generator by the same individual, on both engines on the same flight, could lead to the failure of both generators, and result in a common-cause failure and inflight shutdown of both engines.

#### **Explanation of Relevant Service Information**

The FAA has reviewed and approved the following Boeing 777 Service Letters that recommend temporary revisions to the backup generator servicing and dispatch (operational) procedures for Model 777 series airplanes equipped with Trent 800, GE90, and PW4000 series turbofan engines.

- 777-SL-24-023-B, dated August 16, 1999, "Back Up Generator Servicing and Dispatch Requirements—Temporary Revision—RR Installations."

- 777-SL-24-024, dated August 16, 1999, "Back Up Generator Servicing and Dispatch Requirements—Temporary Revision—GE Installations."

- 777-SL-24-025, dated August 18, 1999, "Back Up Generator Servicing and Dispatch Requirements—Temporary Revision—PW Installations."

The FAA also has reviewed and approved Rolls-Royce Service Bulletin RB.211-72-C813, Revision 1, dated July 16, 1999, which describes certain maintenance actions (i.e., an inspection of the engine external gearbox to detect damage, and corrective actions, if necessary) for Trent 800 series turbofan engines, which are recommended by Rolls-Royce in the event of a backup generator low oil pressure/shaft shear event.

#### **Explanation of the Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 777 series airplanes of the same type design, this AD is being issued to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the dispatch of Model 777 series airplanes having backup generators with sheared shafts; and to prohibit any extended twin-engine operations (ETOPS) flight until a non-ETOPS flight of at least one hour in duration is accomplished, following replacement of the backup generator on both the left and right engines with a new or serviceable backup generator. This amendment also requires repetitive inspections to ensure correct operation of the backup generators; and, for certain airplanes, a one-time inspection to detect damage of the engine external gearbox; and corrective actions, if necessary. The actions are required to be

accomplished in accordance with the service information described previously except as discussed below.

#### Differences Between the AD and the Service Information

Boeing Service Letters 777-SL-24-023-B and 777-SL-24-024 recommend against the dispatch of Boeing Model 777 series airplanes equipped with Trent 800 or GE90 series turbofan engines having a sheared shaft on the backup generator. Service Letter 777-SL-24-025, applicable to Boeing Model 777 series airplanes equipped with PW4000 series turbofan engines, does not recommend against the operation of Model 777 series airplanes having a sheared shaft on the backup generator. However, this AD prohibits dispatch of any Model 777 series airplane having a sheared shaft on the backup generator. This AD also prohibits any extended twin-engine operations (ETOPS) flight until a non-ETOPS flight of at least one hour in duration is accomplished, following replacement of the backup generator on both the left and right engines with a new or serviceable backup generator.

In addition, this AD requires certain Rolls-Royce Trent 800 engine maintenance actions that are recommended in Rolls-Royce Service Bulletin RB.211-72-C813, Revision 1, but that are not included in the Boeing Service Letter 777-SL-24-023-B for Rolls-Royce engines. Such maintenance actions are required by this AD if a backup generator shaft has sheared within the last 250 flight hours, or if the gearbox inspections specified in Revision 1 of the Rolls-Royce service bulletin were not accomplished.

#### Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

#### Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or

arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-323-AD." The postcard will be date stamped and returned to the commenter.

#### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the

Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**99-25-13 Boeing:** Amendment 39-11456. Docket 99-NM-323-AD.

**Applicability:** Model 777-200 and -300 series airplanes equipped with Rolls-Royce Trent 800, General Electric GE90, or Pratt & Whitney PW4000 series turbofan engines; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prohibit dispatch of an airplane with an engine-mounted backup generator having a sheared shaft; and to detect and correct damage to the engine, which could result in inflight shutdowns; accomplish the following:

#### Revisions to the Airplane Flight Manual

(a) For all airplanes: Within 14 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD in the AFM.

"Dispatch of the airplane with an engine-mounted backup generator having a sheared shaft is prohibited.

Following replacement of the backup generator on both the left and right engines,

extended twin-engine operations (ETOPS) flight is prohibited until a non-ETOPS flight of at least one hour in duration is accomplished."

#### Prohibited Servicing or Replacement

(b) For all airplanes: As of 14 days after the effective date of this AD, servicing of both the left and right backup generators or replacement of both backup generators with new or serviceable components by the same individual prior to the same flight is prohibited.

#### One-Time Actions for Rolls-Royce Engines

(c) For airplanes equipped with Rolls-Royce Trent 800 series turbofan engines: Within 14 days after the effective date of this AD, determine whether the status message "ELEC BACKUP GEN L(R)" and the maintenance message "Backup generator L(R) has a sheared shaft" have occurred within the last 250 flight hours prior to the effective date of this AD. If these messages have occurred during that time, accomplish follow-on corrective actions, as applicable, at the times specified in paragraphs C.1.(c) and D. of Rolls-Royce Service Bulletin RB.211-72-C813, Revision 1, dated July 16, 1999, in accordance with the procedures specified in the service bulletin.

**Note 2:** Boeing Service Letter 777-SL-24-023-B, dated August 16, 1999, references Rolls-Royce Service Bulletin RB.211-72-C813, Revision 1, dated July 16, 1999, as an additional source of service information to accomplish certain actions required by this AD.

#### Inspections and Corrective Actions

(d) Within 14 days after the effective date of this AD, and thereafter prior to each flight: Accomplish paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable.

#### Rolls-Royce Engines

(1) For airplanes equipped with Rolls-Royce Trent 800 series turbofan engines, accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Inspect the Electrical Maintenance Page of the engine indicating and crew alerting system (EICAS), and perform follow-on corrective actions, as applicable, at the times specified in and in accordance with the procedures specified in Boeing Service Letter 777-SL-24-023-B, dated August 16, 1999.

(ii) If the status message "ELEC BACKUP GEN L(R)" is active: Prior to further flight, inspect the Maintenance Access Terminal (MAT) for certain maintenance messages indicating a sheared shaft or low oil pressure, as specified in Step 2.a. of Boeing Service Letter 777-SL-24-023-B, dated August 16, 1999; and accomplish the corrective actions specified in Steps 2.a.(1) or 2.a.(2), as applicable, in accordance with that service letter.

#### General Electric Engines

(2) For airplanes equipped with General Electric GE90 series turbofan engines: If the status message "ELEC BACKUP GEN L(R)" is active, prior to further flight, inspect the MAT for certain maintenance messages indicating a sheared shaft or low oil pressure, as specified in Step 1.a. of Boeing Service

Letter 777-SL-24-024, dated August 16, 1999; and accomplish the corrective actions specified in Steps 1.a.(1) or 1.a.(2), as applicable, in accordance with the service letter.

#### Pratt & Whitney Engines

(3) For Model 777 series airplanes equipped with Pratt & Whitney PW4000 series turbofan engines: If the status message "ELEC BACKUP GEN L(R)" is active, prior to further flight, inspect the MAT for certain maintenance messages indicating a sheared shaft or low oil pressure, as specified in Step 1.a. of Boeing Service Letter 777-SL-24-025, dated August 18, 1999, in accordance with that service letter.

(i) If any of the specified maintenance messages is active, prior to further flight, remove and replace the backup generator in accordance with Airplane Maintenance Manual (AMM) 24-25-01-000-801 or 24-25-01-400-801, as applicable.

(ii) If the backup generator shaft is found to be sheared, or either of the low oil pressure messages are active, prior to further flight, accomplish the corrective actions specified in Step 1.a.(1) of Boeing Service Letter 777-SL-24-025, dated August 18, 1999, in accordance with that service letter.

#### Flight Test After Replacement of Backup Generators

(e) For all airplanes: As of 14 days after the effective date of this AD, following any replacement of the backup generator on both the left and right engines, accomplish paragraphs (c)(1) and (c)(2) of this AD at the times specified in those paragraphs.

(1) Prior to any ETOPS flight, conduct a non-revenue test flight of at least one hour in duration, or a non-ETOPS flight that is either a non-revenue or revenue flight of at least one hour in duration.

(2) Prior to further flight after accomplishment of the action required by paragraph (e)(1) of this AD: Verify accomplishment of the maintenance actions required by paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable.

#### Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

#### Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

#### Incorporation by Reference

(h) Except as provided by paragraphs (a) and (d)(3)(i) of this AD, the actions shall be done in accordance with Rolls-Royce Service Bulletin RB.211-72-C813, Revision 1, dated July 16, 1999; Boeing Service Letter 777-SL-24-023-B, dated August 16, 1999; Boeing Service Letter 777-SL-24-024, dated August 16, 1999; or Boeing Service Letter 777-SL-24-025, dated August 18, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 23, 1999.

Issued in Renton, Washington, on November 30, 1999.

**D.L. Riggan,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99-31472 Filed 12-7-99; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-341-AD; Amendment 39-11450; AD 99-25-07]

**RIN 2120-AA64**

#### Airworthiness Directives; BFGoodrich Main Brake Assemblies as Installed on Airbus Model A319 and A320 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain BFGoodrich main brake assemblies as installed on Airbus Model A319 and A320 series airplanes. This action requires a one-time inspection of the wear indicator pins to determine the level of wear of the main brake assemblies of the main landing gear (MLG), and corrective actions, if necessary. This action also requires modification of the main brake assemblies of the MLG, and incorporation of specified wear limits into the maintenance inspection program. This amendment is prompted by in-service reports of brake deterioration caused by thermal

oxidation of the carbon disks of certain BFGoodrich main brake assemblies. The actions specified in this AD are intended to prevent thermal oxidation of the main brake assemblies, which could result in deterioration of the MLG brakes, and consequent reduced braking performance.

**DATES:** Effective December 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 23, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 7, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-341-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from BFGoodrich Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio, 45373. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** The FAA has received in-service reports of brake deterioration of certain BFGoodrich main brake assemblies installed on Airbus Model A319 and A320 series airplanes. Investigation revealed that the deterioration of these BFGoodrich brakes was caused by thermal oxidation of the carbon material due to exposure to elevated temperatures for prolonged periods of time. Further investigation revealed that the oxidation inhibitor process used by BFGoodrich does not completely prevent oxidation of the carbon brake material. BFGoodrich advises that these carbon brakes, which are susceptible to this oxidation condition, are only used on Airbus Model A319 and A320 series airplanes. This condition, if not corrected, could result in deterioration of the MLG brakes, and consequent reduced braking performance.

### **Explanation of Relevant Service Information**

BFGoodrich has issued Service Bulletins 2-1598-32-1, and 2-1600-32-2, both dated November 5, 1999, which describe procedures for removal of main brake assemblies with wear indicator pins having a length of 0.20 inch or less, and modification of the main brake assemblies of the MLG. The modification involves reducing the length of the wear indicator pins, and re-identifying the piston housings and identification plates of the main brake assemblies.

### **FAA's Determination**

The FAA has determined that a direct correlation exists between the amount of wear and the degree of thermal oxidation. Therefore, by limiting the wear of the carbon brake assemblies, as required by this AD, thermal oxidation is controlled to an acceptable level.

### **FAA's Conclusions**

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

### **Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent thermal oxidation of the main brake assemblies, which could result in deterioration of the MLG brakes, and consequent reduced braking performance. This AD requires one-time detailed visual inspection of the wear indicator pins to determine the level of wear of the main brake assemblies of the main landing gear (MLG), and corrective actions, if necessary. This AD also requires modification of the main brake assemblies of the MLG, and incorporation of specified wear limits into the FAA-approved maintenance inspection program. Certain actions are required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

### **Interim Action**

This is considered to be interim action. The brake manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the

FAA may consider additional rulemaking.

### **Differences Between AD and Service Information**

Operators should note that the BFGoodrich service bulletins allow an option of either replacement of any main brake assembly with 0.20 inch or less remaining on the wear indicator pins, or modification of the brake assembly by reducing the wear indicator pins. Additionally, the BFGoodrich service bulletins do not recommend a compliance time for either action. However, this AD requires a one-time inspection of the wear indicator pins within 10 days, and replacement of the brake assembly if the remaining length of the wear indicator pin is equal to or less than 0.20 inch. This AD also requires modification of the brake assembly to reduce the length of the wear indicator pins within 30 days, and re-identification of the piston housings and identification plates no later than the next brake removal. The FAA finds that in view of in-service reports of main brake assembly deterioration, the requirements specified in this AD are appropriate to maintain a consistent main brake assembly configuration for all airplanes that are affected by the subject unsafe condition.

### **Determination of Rule's Effective Date**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### **Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-341-AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**99-25-07 BFGoodrich:** Amendment 39-11450. Docket 99-NM-341-AD.

**Applicability:** BFGoodrich main brake assemblies having part number (P/N) 2-1598 or 2-1600, as installed on Airbus Model A319 and A320 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent thermal oxidation of the main brake assemblies of the main landing gear (MLG), which could result in deterioration of the MLG brakes, and consequent reduced braking performance, accomplish the following:

### Detailed Visual Inspection

(a) Within 10 days after the effective date of this AD, perform a one-time detailed visual inspection of the wear indicator pins to determine the level of wear of the main brake assemblies of the MLG, as specified in BFGoodrich Service Bulletin 2-1598-32-1, or 2-1600-32-2, both dated November 5, 1999, as applicable.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(1) If the remaining length of any wear indicator pin is less than or equal to 0.20 inch (5.1 mm) with the brake pressurized, prior to further flight, replace the brake assembly with a new or serviceable brake assembly, in accordance with Chapter 32-42-27 of the applicable Airplane Maintenance Manual (AMM).

(2) If the remaining length of all wear indicator pins is greater than 0.20 inch (5.1 mm) with the brake pressurized, no further action is required by this paragraph.

### Modification

(b) Within 30 days after the effective date of this AD, modify the main brake assemblies of the MLG by reducing the length of the wear indicator pins, in accordance with BFGoodrich Service Bulletin 2-1598-32-1, or 2-1600-32-2, both dated November 5, 1999, as applicable; and incorporate the new wear limits for the main brake assemblies specified in the applicable service bulletin into the FAA-approved maintenance program and comply with those limits thereafter. After accomplishing the modification, but no later than the next brake removal, re-identify the brake assemblies in accordance with the applicable service bulletin.

**Note 3:** Once an operator has complied with the requirements of paragraph (b) of this AD, that paragraph does not require that operators subsequently record accomplishment of the requirements each time a brake is inspected or overhauled in accordance with that operator's FAA-approved maintenance inspection program.

### Spares

(c) As of the effective date of this AD, no person shall install on any airplane a BFGoodrich main brake assembly having P/N 2-1598 or 2-1600, unless that assembly has been modified in accordance with this AD.

### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

### Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(f) The actions shall be done in accordance with BFGoodrich Service Bulletin 2-1598-32-1, dated November 5, 1999, or BFGoodrich Service Bulletin 2-1600-32-2, dated November 5, 1999, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio, 45373. Copies may be



inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 23, 1999.

Issued in Renton, Washington, on November 24, 1999.

**D.L. Riggins,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99-31474 Filed 12-7-99; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-NM-284-AD; Amendment 39-11453; AD 99-25-10]

**RIN 2120-AA64**

#### **Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires a one-time inspection of the forward engine mount assembly of the left and right engines to verify that the part number on each assembly is correct; re-identification of the forward engine mount assembly; and follow-on actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent structural failure of the secondary load path of the forward engine mount, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane.

**DATES:** Effective January 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the

Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### **FOR FURTHER INFORMATION CONTACT:**

Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on November 23, 1998 (63 FR 64654). That action proposed to require a one-time inspection of the forward engine mount assembly of the left and right engines to verify that the part number on each assembly is correct; re-identification of the forward engine mount assembly; and follow-on actions, if necessary.

#### **Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters state that they are not affected by the proposed rule.

#### **Request To Extend Compliance Time for Re-identification**

One commenter, the manufacturer, requests that the FAA extend the compliance time for the re-identification requirement in paragraph (a)(1) of the proposed AD from "prior to further flight" to "within 2,250 flight hours." The commenter states that such an extension would allow operators more flexibility. The commenter points out that the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, is planning to revise French airworthiness directive 98-293-118(B), dated July 29, 1998 (which was referenced in the NPRM as the appropriate corresponding French airworthiness directive) on December 12, 1998, to allow this flexibility of the compliance time.

The FAA partially concurs with the commenter's request. The FAA has determined that there is no configuration difference, and therefore, it is not necessary to accomplish the re-identification prior to further flight. However, the FAA has determined that the required compliance time should be specified in terms of landings, rather than flight hours, to correspond to the compliance time specified in paragraph (a)(2)(i) of the AD. The FAA has revised

paragraph (a)(1) of this AD to allow re-identification of the engine mounts within 2,250 landings following accomplishment of the inspection specified in paragraph (a) of this AD, or at the next engine removal, whichever occurs first. In addition, the FAA has revised NOTE 7 (NOTE 5 of the proposed AD) of the final rule to additionally reference French airworthiness directive 98-293-118(B) R1, dated December 16, 1998.

#### **Request To Withdraw the Re-identification Requirement**

One commenter requests that the FAA not require re-identification of the mounts, as required by paragraph (a)(2) of the proposed AD, unless the configuration of the mount is altered. The commenter states that the engine mount assembly re-identification serves no purpose because there is no configuration difference between item number 740-2020-513 "N" and -517. The commenter further states that all of the mounts will be re-identified to a new part number when improved thrust links are installed in accordance with Airbus Service Bulletin A320-71-1020, dated May 25, 1998.

The FAA does not concur with the commenter's request. Accomplishment of Service Bulletin A320-71-1020 is required by AD 99-21-19, amendment 39-11364 (64 FR 55414, November 17, 1999). Because there is other service information that affects the engine mount part number, the FAA finds that the re-identification required by paragraph (a)(2) of the AD is important to ensure proper control of the status of the engine mounts.

#### **Request for Relief From Removing Engines Simultaneously**

One commenter requests relief from accomplishing the procedures in paragraph B (4)(b) of Airbus Service Bulletin A320-71-1021, dated February 6, 1998, or Revision 01, dated June 10, 1998, which states that both engines must be modified at the same time. The commenter notes that removal of both engines at the same time requires a flight test, which increases the cost and time out-of-service.

The FAA concurs with the commenter's request. The FAA finds no technical reason for the modification of both engines to occur at the same time. However, both engines must be modified prior to 2,250 landings following accomplishment of the inspection or at the next engine removal, whichever occurs first. The FAA has added a note after paragraph (a)(2)(i) of the final rule to provide



clarification regarding accomplishment of the modification for each engine.

### Explanation of Change Made to Proposal

The FAA has clarified the inspection requirement contained in the proposed AD. Whereas the proposal specified a visual inspection, the FAA has revised this final rule to clarify that its intent is to require a general visual inspection. Additionally, a note has been added to the final rule to define that inspection.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Cost Impact

The FAA estimates that 73 airplanes of U.S. registry will be affected by this AD, that it will take approximately 70 work hours per airplane to accomplish the required inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$306,600, or \$4,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**99-25-10 Airbus Industrie:** Amendment 39-11453. Docket 98-NM-284-AD.

**Applicability:** Model A319-131 and -132, A320-232 and -233, and A321-131 series airplanes; except those on which Airbus Modification 27020 has been accomplished (reference Airbus Service Bulletin A320-71-1021, Revision 01, dated June 10, 1998); certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent structural failure of the forward engine mount secondary load path, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane, accomplish the following:

#### Inspection and Follow-On Actions

(a) Within 500 flight hours after the effective date of this AD: Perform a one-time general visual inspection of the forward engine mount assembly of the left and right engines to verify that the part number (P/N) on each assembly is correct, in accordance with Airbus Service Bulletin A320-71-1021, Revision 01, dated June 10, 1998.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If the P/N on the forward engine mount assembly of the left and right engines is 740-2010-513N or 740-2010-513 with a revision of N' or higher: Within 2,250 landings following accomplishment of the inspection specified in paragraph (a) of this AD, or at the next engine removal, whichever occurs first, re-identify each assembly in accordance with the service bulletin. No further action is required by this AD.

(2) If the P/N on the forward engine mount assembly of the left and right engines is different from the P/N's specified in paragraph (a)(1) of this AD, or if the P/N cannot be determined: Prior to further flight, perform a detailed visual inspection to detect any crack or failure of the thrust links on each forward engine mount assembly, in accordance with the service bulletin.

(i) If no crack or failure of any thrust link on the left or right engine is detected: Within 2,250 landings following accomplishment of the inspection specified in paragraph (a)(2) of this AD, or at the next engine removal, whichever occurs first, modify each engine mount and its installation, and re-identify each forward engine mount assembly; in accordance with the service bulletin.

**Note 3:** Simultaneous modification of both engines is not required.

(ii) If any crack or failure of any thrust link on the left or right engine is detected, prior to further flight, replace the existing thrust link with a new thrust link, modify each engine mount, and re-identify each forward engine mount assembly; in accordance with the service bulletin.

**Note 4:** Inspection and modification of the engine mount assembly accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320-71-1021, dated February 6, 1998, is considered acceptable for compliance with the applicable actions specified in this AD.

**Note 5:** Airbus Service Bulletin A320-71-1021, Revision 01, dated June 10, 1998, references V2500 International Aero Engines (IAE) Service Bulletin V2500-NAC-71-0135, Revision 1, dated March 5, 1998, as an additional source of service information for accomplishment of the actions specified in this AD.

#### Spares

(b) As of the effective date of this AD, no person shall install a forward engine mount assembly on any airplane equipped with IAE V2500-A5 engines, unless the actions described in Airbus Service Bulletin A320-71-1021, dated February 6, 1998, or Revision 01, dated June 10, 1998, have been accomplished for that assembly.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 6:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) The actions shall be done in accordance with Airbus Service Bulletin A320-71-1021, Revision 01, dated June 10, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 7:** The subject of this AD is addressed in French airworthiness directives 98-293-118(B), dated July 2, 1998, and 98-293-118(B) R1, dated December 16, 1998.

(f) This amendment becomes effective on January 12, 2000.

Issued in Renton, Washington, on November 30, 1999.

**D.L. Riffin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99-31471 Filed 12-7-99; 8:45 am]

**BILLING CODE 4910-13-U**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 98-NM-266-AD; Amendment 39-11452; AD 99-25-09]

**RIN 2120-AA64**

**Airworthiness Directives; Dassault Model Mystere-Falcon 50 and 900 Series Airplanes, Falcon 900EX Series Airplanes, and Falcon 2000 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Dassault Model Mystere-Falcon 50 and 900 series airplanes, Falcon 900EX series airplanes, and Falcon 2000 series airplanes, that requires revising the Airplane Flight Manual to provide the flight crew with certain instructions associated with the onset of stall warning. This amendment also requires repetitive inspections to detect discrepancies of the hinge pin assemblies of the rear horizontal stabilizer, and corrective actions, if necessary. For certain airplanes, this amendment also requires replacement of the hinge pin assemblies with new, improved parts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent excessive movement and consequent deformation of the hinge pin assemblies of the rear horizontal stabilizer, which could result in flutter and possible failure of the rear horizontal stabilizer.

**DATES:** Effective January 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dassault Model Mystere-Falcon 50 and 900 series airplanes, Falcon 900EX series airplanes, and Falcon 2000 series airplanes was published in the **Federal Register** on June 4, 1999 (64 FR 29966). That action proposed to require revising the Airplane Flight Manual (AFM) to provide the flight crew with certain

instructions associated with the onset of stall warning. That action also proposed to require repetitive inspections to detect discrepancies of the hinge pin assemblies of the rear horizontal stabilizer, and corrective actions, if necessary. For certain airplanes, that action also proposed to require replacement of the hinge pin assemblies with new, improved parts.

**Comments Received**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

**Request To Extend Compliance Time for Initial Inspection**

Two commenters request that the compliance time be revised for the initial inspection required by paragraph (b) of this AD. One commenter states that such a short compliance time (within 300 flight hours or 6 months after the effective date of this AD) would constitute a considerable hardship on operators, due to the time and resources available to accomplish the task in this short period of time. The commenter notes that related airplane flight and maintenance manuals have already been revised by the manufacturer to specify additional time. Another commenter, the manufacturer, suggests that the requirement for an early initial dimensional inspection should be removed. This commenter states that the review of dimensional controls completed on a large portion of affected airplanes has resulted in its conclusion that such early inspection is not necessary to ensure the safety of the flying public, and creates an unnecessary burden on operators. This conclusion is based on the fact that, of all airplanes inspected to date, only a few airplanes have exceeded the criteria, and none were found to exceed by greater than 14 microns (0.0006 in). Additionally, tests and analyses have demonstrated that the fitting deformations do not increase during a 3,750-flight-cycle interval in which normal loads have been experienced. The commenter concludes from this data that extending the initial inspection threshold to 3,750 total flight cycles is acceptable.

The FAA concurs. The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, the Joint Aviation Authorities (JAA), and the manufacturer have advised the FAA that results of early inspections have shown no indication of significant fitting deformations. Based on inspections conducted to date, the

FAA has concluded that the requirement for an early initial inspection is no longer necessary. Accordingly, paragraph (b) of the AD has been revised [and a new paragraph (c) has been added] to extend the compliance time for the initial inspection. Additionally, to simplify the requirements of the AD, the repetitive inspection requirements contained in paragraphs (d) and (e) of the proposed AD are now included in paragraph (b) of the final rule.

#### **Request To Remove Inspection After Stall Event**

One commenter, the manufacturer, requests that the proposed AD be revised to remove the requirement for additional inspection after any stall event, as required by paragraph (c) of the proposed AD. The commenter states that the AFM has already been revised to preclude intentional stalls. Additionally, the likelihood for an unintentional stall is sufficiently low that inspection at intervals of 3,750 flight cycles is deemed adequate to determine if discrepancies of the hinge pin assemblies exist.

The FAA concurs. The DGAC has advised the FAA that it has approved the findings of the manufacturer, and has revised the parallel French airworthiness directives to delete the inspection following a stall event. Based on the manufacturer's information, and in consonance with the DGAC, the FAA has determined that the additional inspection after a stall event is not required. Accordingly, paragraph (c) of the proposed AD has been removed from the final rule.

#### **Request To Revise Replacement Compliance Time**

One commenter requests that paragraph (f)(2) of the proposed AD be deleted, as the replacement required at the time specified in that paragraph can be delayed until the thresholds required by paragraph (f)(1) of the AD. The FAA does not concur, but finds that clarification of the compliance times required in paragraph (f) of the proposal [now paragraph (e)] is necessary. Paragraph (e) of the final rule requires accomplishment of certain actions at the LATER of the times indicated in paragraphs (e)(1) and (e)(2). The compliance times in paragraph (e)(2) are "within 300 flight hours or 6 months after the effective date of this AD, whichever occurs first." These times provide a "grace period" for airplanes that have exceeded the thresholds of "within 6 years since date of manufacture, or prior to the accumulation of 3,750 total flight cycles,

whichever occurs first," as required by paragraph (e)(1) of the AD. The FAA considers such a "grace period" to be beneficial to operators in order to avoid unnecessary grounding of the fleet. No change is necessary in this regard.

#### **Text Revisions Requested**

One commenter, the manufacturer, requests various changes to the text of the proposed AD. The commenter requests that the latest revisions to the related French airworthiness directives be referenced, since the previous revisions have been cancelled. The commenter also notes that Dassault Aviation has developed repair solutions for discrepancies of the hinge pin assemblies of the rear horizontal stabilizer, and these repair solutions have been approved by the DGAC. The commenter requests that these repair solutions be referenced in the proposed AD. Additionally, the commenter notes an incorrect reference in paragraph (a) of the proposed AD to Dassault Mystere-Falcon 50 AFM Temporary Change No. 12 as M813EX, which should be listed as FM813EX. Lastly, the commenter requests that the proposed AD be revised to refer to the applicable revision of Chapter 5-40 of each airplane maintenance manual, since that chapter provides the information necessary to accomplish the repetitive inspections required by the AD.

The FAA partially concurs with the various requests. The FAA has revised "NOTE 6" of the AD to refer to the latest French airworthiness directives. The FAA concurs that the referenced approved repair solutions provide an acceptable method of compliance for the repairs required by paragraph (d) of the AD, and has included this information in new "NOTE 4" to the final rule. The FAA also acknowledges the typographical error in regard to AFM Temporary Change No. 12, and has corrected the reference in the AD. The FAA has also clarified other temporary revision references contained in paragraph (b) of the AD.

The FAA does not concur that references to the applicable revisions of Chapter 5-40 of the maintenance manuals should be included. This information is redundant to the temporary procedures already cited as the appropriate sources of service information, and the required intervals for repetitive inspections are directly specified in this AD. However, the FAA has added a new "NOTE 3" to the AD to inform operators that a general revision to the maintenance manual may be used in lieu of the temporary revisions cited in this AD, provided that the information contained in the general

revision is identical to that contained in the temporary revisions.

#### **Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

#### **Cost Impact**

The FAA estimates that 269 airplanes of U.S. registry will be affected by this AD.

For all airplanes, it will take approximately 1 work hour per airplane to accomplish the required Airplane Flight Manual (AFM) revision, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the AFM revision required by this AD on U.S. operators is estimated to be \$16,140, or \$60 per airplane.

Additionally, for all airplanes, it will take approximately 8 work hours per airplane to accomplish the required inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be \$129,120, or \$480 per airplane, per inspection cycle.

For 49 airplanes of U.S. registry it will take approximately 10 work hours per airplane to accomplish the required replacement, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$6,000 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be \$323,400, or \$6,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### **Regulatory Impact**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**99-25-09 Dassault Aviation:** Amendment 39-11452. Docket 98-NM-266-AD.

**Applicability:** All Model Mystere-Falcon 50 and 900 series airplanes, Falcon 900EX series airplanes, and Falcon 2000 series airplanes; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent excessive movement and consequent deformation of the hinge pin assemblies of the rear horizontal stabilizer, which could result in flutter and possible

failure of the rear horizontal stabilizer, accomplish the following:

#### Dassault Airplane Flight Manual (AFM) Revision

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

#### "DO NOT INTENTIONALLY FLY THE AIRPLANE SLOWER THAN INITIAL STALL WARNING ONSET"

**Note 2:** The AFM revision required by paragraph (a) of this AD also may be accomplished by inserting a copy of the applicable Temporary Change into the applicable AFM, as specified below. When these Temporary Changes have been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the Temporary Changes.

- For Model Mystere-Falcon 50 series airplanes: Dassault Mystere-Falcon 50 AFM Temporary Change No. 46 (DTM813); and Dassault Mystere-Falcon 50 AFM Temporary Change No. 12 (FM813EX).
- For Model Mystere-Falcon 900 series airplanes: Dassault Mystere-Falcon 900 AFM Temporary Change No. 69 (DTM20103).
- For Model Falcon 900EX series airplanes: Dassault Falcon 900EX AFM Temporary Change No. 14 (DTM561).
- For Model Falcon 2000 series airplanes: Dassault Falcon 2000 AFM Temporary Change No. 44 (DTM537).

#### Initial and Repetitive Inspections

(b) At the applicable time specified in paragraph (c) of this AD, perform a dimensional inspection to detect discrepancies (damage, deformation, and excessive movement) of the hinge pin assemblies of the rear horizontal stabilizer in accordance with paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable. Thereafter, repeat the inspection at intervals not to exceed 3,750 flight cycles or 6 years, whichever occurs first.

(1) For Model Mystere-Falcon 50 series airplanes: Inspect in accordance with Dassault Airplane Maintenance Manual (AMM), Revision 1, dated February 1997, as revised by Temporary Revision (TR) No. 7, work card number 704.0/1, dated November 1997.

(2) For Model Mystere-Falcon 900 series airplanes: Inspect in accordance with Dassault AMM, Revision 2, dated July 1997, as revised by TR No. 17, Procedure 55-501, dated November 1997.

(3) For Model Falcon 900EX series airplanes: Inspect in accordance with Dassault AMM, Revision 1, dated December 1996, as revised by Temporary Revision No. 2, Procedure 55-501, dated November 1997.

(4) For Model Falcon 2000 series airplanes: Inspect in accordance with Dassault AMM, Revision 5, Procedure 55-501, dated November 1997.

**Note 3:** The actions required by paragraph (b) of this AD also may be accomplished in

accordance with a general revision of the applicable Dassault AMM, provided that the information contained in the general revision is identical to that specified in the Temporary Revisions cited in that paragraph.

(c) Accomplish the inspection required by paragraph (b) of this AD at the LATER of the times specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Within 6 years since date of manufacture, or prior to the accumulation of 3,750 total flight cycles, whichever occurs first.

(2) Within 300 flight hours or 6 months after the effective date of this AD, whichever occurs first.

(d) If any discrepancy is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent).

**Note 4:** Accomplishment of repair of the hinge pin assemblies in accordance with Falcon Repair Solution F2000-R3 (For Model Falcon 2000 series airplanes), F50-R52 (for Model Mystere-Falcon 50 series airplanes), or F900-R71 (for Model Mystere-Falcon 900 and Falcon 900EX series airplanes); as applicable; is acceptable for compliance with the repairs required by paragraph (d) of this AD.

#### Replacement

(e) For airplanes listed in Dassault Service Bulletins F50-274, F900-203, F900EX-37, and F2000-118, all dated December 17, 1997: Replace the hinge pin assemblies of the rear horizontal stabilizer with new, improved parts in accordance with Part 2, paragraph B.(2) of the Accomplishment Instructions of the applicable service bulletin at the LATER of the times specified in paragraphs (e)(1) and (e)(2) of this AD.

(1) Accomplish the replacement within 6 years since date of manufacture, or prior to the accumulation of 3,750 total flight cycles, whichever occurs first.

(2) Accomplish the replacement within 300 flight hours or 6 months after the effective date of this AD, whichever occurs first.

#### Spares

(f) As of the effective date of this AD, no person shall install a rear horizontal stabilizer hinge pin having part number MY2033175 on any airplane.

#### Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

**Special Flight Permits**

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(i) The replacements shall be done in accordance with Dassault Service Bulletin F50-274, dated December 17, 1997; Dassault Service Bulletin F900-203, dated December 17, 1997; Dassault Service Bulletin F900EX-37, dated December 17, 1997; and Dassault Service Bulletin F2000-118, dated December 17, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 6:** The subject of this AD is addressed in French airworthiness directives 1997-370-020(B) R2, dated June 2, 1999; and 1997-369-004(B) R1, dated June 2, 1999, as revised by Erratum, dated June 30, 1999.

(j) This amendment becomes effective on January 12, 2000.

Issued in Renton, Washington, on November 30, 1999.

**D.L. Riggins,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 99-31470 Filed 12-7-99; 8:45 am]

**BILLING CODE 4910-13-U**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 98-NM-296-AD; Amendment 39-11449; AD 99-25-06]

**RIN 2120-AA64**

**Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that requires a one-time inspection of the bottom aft roller of the main baggage-bay door structure for cracking or damage to the sub-frame; repetitive operational tests to determine if the counter-balance motor functions

properly; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent sub-frame damage, which, if left undetected, could cause rapid decompression of the airplane and consequent injury to passengers and crew.

**DATES:** Effective January 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM-116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on October 8, 1999 (64 FR 54795). That action proposed to require a one-time inspection of the bottom aft roller of the main baggage-bay door structure for cracking or damage to the sub-frame; repetitive operational tests to determine if the counter-balance motor functions properly; and corrective actions, if necessary.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

**Conclusion**

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Cost Impact**

The FAA estimates that 43 airplanes of U.S. registry will be affected by this AD.

It will take approximately 3 work hours per airplane to accomplish the required inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be \$7,740, or \$180 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required test, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the test required by this AD on U.S. operators is estimated to be \$2,580, or \$60 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**99-25-06 British Aerospace Regional Aircraft** [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39-11449. Docket 98-NM-296-AD.

**Applicability:** British Aerospace (Jetstream) Model 4101 airplanes, as listed in Jetstream Service Bulletin J41-52-060, dated August 31, 1998; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent sub-frame damage, which, if left undetected, could cause rapid decompression of the airplane and consequent injury to passengers and crew, accomplish the following:

#### Visual Inspection

(a) Within 1,500 landings or within 5 months after the effective date of this AD, whichever occurs first, perform a one-time general visual inspection of the bottom aft roller of the main baggage bay door structure to check for cracking or damage to the sub-frame in accordance with Jetstream Service Bulletin J41-52-060, dated August 31, 1998. If any cracking or damage is found, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM-116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally

available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being check."

#### Operational Test

(b) Within 30 days after the effective date of this AD, perform an operational test to determine if the counter-balance motor of the main baggage bay door functions properly in accordance with Jetstream Service Bulletin J41-52-060, dated August 31, 1998. Repeat the operational test thereafter at intervals not to exceed 5 days. If the motor fails during any operational test, within 10 flights after accomplishing the test, either replace the motor with a new motor or repair in accordance with the service bulletin, and accomplish the actions specified in paragraph (a) of this AD.

#### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

#### Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

#### Incorporation by Reference

(e) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with Jetstream Service Bulletin J41-52-060, dated August 31, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in British airworthiness directive 005-08-98.

(f) This amendment becomes effective on January 12, 2000.

Issued in Renton, Washington, on November 24, 1999.

**D. L. Riggan,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99-31473 Filed 12-7-99; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 176

[Docket No. 86F-0312]

#### Indirect Food Additives: Paper and Paperboard Components

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acrylamide polymer with sodium 2-acrylamido-2-methylpropanesulfonate as a component of paper and paperboard in contact with dry food. This action is in response to a petition filed by American Cyanamid Co. (currently Cytec Industries, Inc.).

**DATES:** This regulation is effective December 8, 1999; Submit written objections and requests for a hearing by January 7, 2000.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Machuga, Center for Food Safety and Applied Nutrition (CFSAN) (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3085.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

In a notice published in the **Federal Register** of August 19, 1986 (51 FR 29612), FDA announced that a food additive petition (FAP 6B3940) had been filed on behalf of American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470 (currently Cytec Industries, Inc., Five Garret Mountain Plaza, West Paterson, NJ 07424). The petition proposed that the food additive regulations in § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of acrylamide polymer with sodium 2-acrylamido-2-

methylpropanesulfonate as a component of paper and paperboard in contact with dry food.

In its evaluation of the safety of acrylamide polymer with sodium 2-acrylamido-2-methylpropanesulfonate, FDA reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process.

Although the additive itself has not been shown to cause cancer, it may contain minute amounts of acrylamide as an impurity resulting from its manufacture. This chemical has been shown to cause cancer in test animals. Residual amounts of impurities are commonly found as constituents of chemical products, including food additives.

## II. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984)).

## III. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, acrylamide polymer with sodium 2-acrylamido-2-methylpropanesulfonate, will result in exposure no greater than 50 parts per billion of the additive in the daily diet (3 kilograms (kg)) or an estimated daily intake of no more than 150 micrograms per person per day (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an

additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by acrylamide, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of acrylamide has two aspects: (1) Assessment of exposure to the impurity from the petitioned use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

### A. Acrylamide

FDA has estimated the exposure to acrylamide from the petitioned use of the additive as a component of paper and paperboard in contact with dry food to be no more than 0.78 part per trillion in the daily diet (3 kg) or 2.3 nanograms per person per day (ng/p/d) (Ref. 3). The agency used data from a long-term rat bioassay on acrylamide, conducted by Johnson et al. (Refs. 4 and 5), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidences of thyroid follicular adenomas and testicular mesotheliomas in male rats, and mammary tumors (adenomas or adenocarcinomas, fibromas or fibroadenomas, adenocarcinomas alone), central nervous system tumors (brain astrocytomas, brain or spinal cord glial tumors), and uterine tumors in female rats.

Based on the agency's estimate that exposure to acrylamide will not exceed 2.3 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is  $2.7 \times 10^{-8}$  or 2.7 in 100 million (Refs. 5 and 6). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to acrylamide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to

acrylamide would result from the petitioned use of the additive.

### B. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of acrylamide as an impurity in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which acrylamide may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to acrylamide is very low, 2.7 in 100 million.

## IV. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive as a component of paper and paperboard in contact with dry food is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 176.180 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petitions and the documents that FDA considered and relied upon in reaching its decision to approve the petitions are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

## V. Environmental Impact

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before January 7, 2000, file with the Dockets Management Branch



(address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry and Environmental Review Team, FDA, to the Division of Petition Control, FDA, "DPC Request to Identify and Address Unresolved Issues in the Pending Acrylamide Petitions," August 7, 1997.
2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *Chemical Safety Regulation and Compliance*, edited by F. Homburger, and J. K. Marquis, New York, NY, pp. 24–33, 1985.
3. Memorandum from the Chemistry and Environmental Review Team, FDA, to the Division of Petition Control, FDA, "Exposure to Acrylamide From the Use of the Sodium Salt of Copolymers 2-Acrylamido-2-Methylpropanesulfonic Acid and Acrylamide," February 3, 1999.
4. Johnson, K. A., Gorzinski, S. J., Bodner, K. M., Campbell, R. A., Wolf, C. H., Friedman, M. A., and Mast, R. W., "Chronic Toxicity and Oncogenicity Study on Acrylamide Incorporated in the Drinking Water of Fischer 344 Rats," *Toxicology and Applied Pharmacology*, 85:154–168, 1986.
5. Memorandum from the Division of Petition Control, FDA, to the Quantitative Risk Assessment Committee, FDA, "Estimation of Upper-Bound Risk for Acrylamide Exposure Resulting From the Use

of Acrylamide Polymer with Sodium 2-Acrylamido-2-Methylpropanesulfonate—FAP 6B3940," March 3, 1999.

6. Memorandum of Conference, FDA, CFSAN, Washington, DC, Cancer Assessment Committee Meeting on Acrylamide, February 13 and June 6, 1985, May 31, 1996.

### List of Subjects in 21 CFR Part 176

Food additives, Food packaging. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

### PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.180 is amended in the table in paragraph (b)(2) by alphabetically adding an entry under the headings "List of substances" and "Limitations" to read as follows:

### § 176.180 Components of paper and paperboard in contact with dry food.

*	*	*	*	*
(b)	*	*	*	*
(2)	*	*	*	*

List of substances	Limitations
Acrylamide polymer with sodium 2-acrylamido-2-methylpropane-sulfonate (CAS Reg. No. 38193–60–1)	For use at a level not to exceed 0.015 weight percent of dry fiber.
* * *	* * *

Dated: November 30, 1999.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 99–31700 Filed 12–7–99; 8:45 am]

**BILLING CODE 4160–01–F**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[OPP–300947; FRL–6390–9]

RIN 2070–AB78

### Tebufenozide; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of

tebufenozide in or on soybeans. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on soybeans. This regulation establishes a maximum permissible level for residues of benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide in this food commodity. The tolerance will expire and is revoked on December 31, 2001.

**DATES:** This regulation is effective December 8, 1999. Objections and requests for hearings, identified by docket control number OPP–300947, must be received by EPA on or before February 7, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each

method as provided in Unit VII. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300947 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@epa.gov.

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially



affected categories and entities may include, but are not limited to:

Cat-egories	NAICS codes	Examples of poten-tially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufac-turing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-300947. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson

Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the insecticide tebufenozide, in or on soybeans at 2.0 part per million (ppm). This tolerance will expire and is revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has

established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Tebufenozide on Soybeans and FFDCA Tolerances

The state of Louisiana declared a crisis for the use of tebufenozide on soybeans to control fall armyworms due to lack of efficacy of currently labeled products. EPA has authorized under FIFRA section 18 the use of tebufenozide on soybeans for control of fall armyworms in Louisiana.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide in or on soybeans. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on soybeans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether tebufenozide meets EPA's registration requirements for use on soybeans or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Louisiana to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional

information regarding the emergency exemption for tebufenozide, contact the Agency's Registration Division at the address provided under "FOR FURTHER INFORMATION CONTACT."

#### IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of tebufenozide on soybeans at 2.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

##### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed in this unit.

##### B. Toxicological Endpoint

1. *Acute toxicity.* No toxicological endpoint has been identified for acute toxicity. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neurological or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 milligrams/kilograms/day (mg/kg/day). No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (limit-dose) during gestation to pregnant rats or rabbits.

2. *Short- and intermediate-term toxicity.* No toxicological endpoints have been identified for short- and intermediate-term toxicity. No dermal or systemic toxicity was seen in rats administered 15 dermal applications at 1,000 mg/kg/day (limit dose) over 21

days with either technical tebufenozide or 23% active ingredient formulation. Despite hematological effects seen in the dog study, similar effects were not seen in these rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies.

3. *Chronic toxicity.* EPA has established the reference dose, or RfD, for tebufenozide at 0.018 mg/kg/day. This RfD is based on the no observable adverse effect level (NOAEL) of 1.8 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver at the lowest observable adverse effect level (LOAEL) of 8.7 mg/kg/day. An uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variability) was applied to the NOAEL of 1.8 mg/kg/day to calculate the RfD of 0.018 mg/kg/day.

EPA has determined that the 10X factor to account for enhanced susceptibility of infants and children (as required by FQPA) can be removed, and therefore, the chronic Population Adjusted Dose (cPAD), is 0.018 mg/kg/day, which is the same as the RfD. For purposes of this risk assessment, the term cPAD will be used instead of RfD. The determination that the 10X factor be removed is based on the results of reproductive and developmental toxicity studies. No evidence of additional sensitivity to young rats or rabbits was observed following prenatal or postnatal exposure to tebufenozide.

4. *Carcinogenicity.* Tebufenozide is classified as Group E (no evidence of carcinogenicity in humans).

##### C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. Tolerances, in support of registrations, currently exist for residues of tebufenozide on apples, berries, canola, cotton, cranberries, fruiting vegetables, leafy vegetables, milk, mint, pears, pecans, pome fruit, sugarcane, turnips, walnuts and livestock commodities of cattle, goats, hogs, horses, and sheep. Additionally, time-limited tolerances associated with emergency exemptions have been established for poultry, eggs, peanuts, rice, and sweet potatoes. Risk assessments were conducted by EPA to assess dietary exposures and risks from tebufenozide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed

for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose or 1 day exposure. Therefore, no toxicological endpoint was identified for acute toxicity and no acute dietary risk assessment is needed.

ii. *Chronic exposure and risk.* The Agency conducted a chronic dietary exposure analysis and risk assessment. The chronic analysis for tebufenozide used a cPAD of 0.018 mg/kg/day. The analysis evaluated individual food consumption as reported by respondents in the USDA 1989-92 Continuing Surveys of Food Intake by Individuals and accumulates exposure to the chemical for each commodity. Tolerance level residues and some percent crop treated (PCT) assumptions were made for the proposed commodities to estimate the Anticipated Residue Concentration (ARC) for the general population and subgroups of interest. The percent of the cPAD that would exceed the Agency level of concern would be 100%. The existing tebufenozide tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in a ARC that is equivalent to percentages of the cPAD below 100% for all subgroups U.S. population, 14% and non-nursing infants (<1 year old), the most highly exposed subgroup, 44%.

Section 408(b)(2)(F) states that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

Estimates of PCT were used for the following crops. In all cases the maximum estimate was used:

Crops	Average	Maximum
Almonds .....	<1%	<1%
Apples .....	1%	2%
Beans/Peas, Dry	0%	1%
Cabbage, Fresh	2%	3%
Cole Crops .....	1%	2%
Cotton .....	1%	4%
Pears .....	<5%	
Spinach, Fresh	2%	3%
Spinach, Proc- essed .....	20%	29%
Sugarcane .....	3%	5%
Walnuts .....	10%	16%

The Agency believes that the three conditions, discussed in section 408(b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which tebufenozide may be applied in a particular area.

2. *From drinking water.* The Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for tebufenozide. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on Generic Expected Environmental Concentration (GENEEC) and EPA's Pesticide Root Zone Model (PRZM/EXAMS) for surface water, which are used to produce

estimates of pesticide concentrations in a farm pond and Screening Concentrations in Ground Water (SCI-GROW), which predicts pesticide concentrations in ground water. None of these models include consideration of the impact processing of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. For the proposed uses, based on the GENEEC and SCI-GROW models, the chronic drinking water concentration value are estimated to be 29 ppb for surface water and 1 ppb for ground water.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to tebufenozide they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* Tebufenozide is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore, EPA expects only dietary and occupational exposure from the use of tebufenozide.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a

cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

#### *D. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk.* As discussed above, no toxicological endpoint was identified for acute toxicity. Therefore, no acute aggregate risk assessment is needed.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 14% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure, non-nursing infants (<1 year old) will utilize 44% of the cPAD. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water, after calculating DWLOCs and comparing them to conservative model estimates of concentrations of tebufenozide in surface and ground water (29 ppb and 1 ppb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Tebufenozide is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore no short- and intermediate-term aggregate risk assessments are needed.

4. *Aggregate cancer risk for U.S. population.* Tebufenozide is classified as Group E (no evidence of carcinogenicity in humans).

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

### *E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In prenatal developmental toxicity studies in rats and rabbits, there was no evidence of maternal or developmental toxicity; the maternal and developmental NOELs were 1,000 mg/kg/day (highest dose tested).

iii. *Reproductive toxicity study.* In 2-generation reproduction studies in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses than in the maternal/parental animals.

iv. *Prenatal and postnatal sensitivity.* The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day

in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

v. *Conclusion.* There is a complete toxicity data base for tebufenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide. Based on this, EPA concludes that reliable data support the use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* No toxicological endpoint was identified for acute toxicity. Therefore, no acute aggregate risk assessment is needed.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 44% of the cPAD for infants and 29% of the cPAD for children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water, after calculating DWLOCs and comparing them to conservative model estimates of concentrations of tebufenozide in surface and ground water (29 ppb and 1 ppb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* Tebufenozide is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore no short- and intermediate-term aggregate risk assessments are needed.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

### **V. Other Considerations**

#### *A. Metabolism in Plants and Animals*

The residue of concern in plants is adequately understood and is tebufenozide *per se*. The qualitative nature of the residues in animals is also adequately understood based on acceptable poultry and ruminant metabolism studies. For animals, EPA has concluded that the residues of regulatory concern are tebufenozide and

its metabolites benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl)benzoyl)hydrazide, benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, the stearic acid conjugate of benzoic acid, 3-hydroxymethyl, 5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl)benzoyl)hydrazide.

#### *B. Analytical Enforcement Methodology*

Adequate enforcement methodology (for example, gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305-5229; e-mail address: furlow.calvin@epa.gov.

#### *C. Magnitude of Residues*

Residues of tebufenozide *per se* are not expected to exceed 2.0 ppm on soybeans as a result of this section 18 use.

#### *D. International Residue Limits*

There are currently no Canadian, or Mexican listings for tebufenozide residues. Codex maximum residue levels (MRLs) have been set for tebufenozide at 0.1 ppm for rice (husked), 0.05 ppm for walnuts, and 1 ppm for pome fruits.

### **VI. Conclusion**

Therefore, the tolerance is established for residues of tebufenozide in soybeans at 2.0 ppm.

### **VII. Objections and Hearing Requests**

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the

old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

#### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-300947 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 7, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For

additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov), or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP-300947, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

#### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

### **VIII. Regulatory Assessment Requirements**

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to

include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

#### IX. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 17, 1999.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.482, by adding alphabetically to the table in paragraph (b), the following commodity to read as follows:

#### § 180.482 Tebufenozide; tolerances for residues.

\* \* \* \* \*

(b) \* \* \*

Commodity	Parts per million	Expiration/revocation date
* * *	* *	*
Soybeans .....	2.0	12/31/01
* * *	* *	*

[FR Doc. 99-31547 Filed 12-7-99; 8:45 am]

**BILLING CODE 6560-50-F**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 51

[CC Docket Nos. 96-45 and 96-98; FCC 99-86]

#### Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deaveraged Rate Zones for Unbundled Network Elements

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** This document announces the lifting of the stay of the Commission's rule requiring each state to establish at least three geographic rate zones for unbundled network elements and interconnection.

**DATES:** Section 51.507(f), published at 61 FR 45476 (Aug. 29, 1996), is effective on May 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Neil Fried, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418-1520.

**SUPPLEMENTARY INFORMATION:** The Commission stayed the effectiveness of section 51.507(f) of its rules on May 7, 1999. See Deaveraged Rate Zones for Unbundled Network Elements, CC Docket No. 96-98, Stay Order, 14 FCC Rcd. 8300 (1999); 64 FR 32206 (June 16, 1999). The Commission stated that the stay would remain in effect until six months after the Commission released its order in CC Docket No. 96-45 finalizing and ordering implementation of high-cost universal service support for non-rural LECs. The Commission adopted on Nov. 2, 1999, its order in CC Docket No. 96-45 finalizing and ordering implementation of intrastate high-cost universal service support for non-rural LECs. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306 (rel. Nov. 2, 1999). Consequently, as stated in the Nov. 2 order, the stay of section 51.507(f) shall be lifted on May 1, 2000. By that date, states are required to establish different rates for interconnection and UNEs in at least three geographic areas pursuant to section 51.507(f) of the Commission's rules.

#### List of Subjects in 47 CFR Part 51

Communications common carriers, Deaveraged rate zones, Interconnection, Local competition, Pricing of elements, Telecommunications, Unbundled network elements.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99-31496 Filed 12-7-99; 8:45 am]

**BILLING CODE 6712-01-P**

# Proposed Rules

Federal Register

Vol. 64, No. 235

Wednesday, December 8, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 100

[INS No. 1949–98]

RIN 1115–AF18

#### Jurisdictional Change for the Los Angeles and San Francisco Asylum Offices

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule

**SUMMARY:** This rule proposes to amend the Immigration and Naturalization Service (Service) regulations to transfer asylum office jurisdiction over the State of Hawaii and the Territory of Guam from the San Francisco Asylum Office to the Los Angeles Asylum Office. The Los Angeles Asylum office would have jurisdiction over the states of Arizona, southern portion of California, Hawaii, the southern portion of Nevada currently within the jurisdiction of the Las Vegas Suboffice, and the Territory of Guam. The intended effect of this regulation is to reallocate Service resources and improve processing efficiency for the Los Angeles and San Francisco Asylum Offices given the greater number of asylum officers stationed in Los Angeles.

**DATES:** Written comments must be submitted on or before February 7, 2000.

**ADDRESSES:** Please submit written comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1949–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Christine Davidson, Supervisory Asylum Officer, or Marta Rothwarf, Asylum Officer, Office of International

Affairs, Asylum Division, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536, Attn: ULLICO Bldg., Third Floor; Telephone (202) 305–2663.

#### SUPPLEMENTARY INFORMATION:

#### Why Is Jurisdiction Being Transferred to the Los Angeles Asylum Office?

The regulation at 8 CFR 100.4(f)(7) gives the San Francisco Asylum Office jurisdiction over asylum applications filed by individuals residing in the State of Hawaii and the Territory of Guam. Transferring jurisdiction over the State of Hawaii and the Territory of Guam to the Los Angeles Asylum Office under 8 CFR 100.4(f)(8) will enable the Service to better allocate its resources and improve processing efficiency based on the availability of asylum officers in the Los Angeles Asylum Office.

#### How Will This Change Affect Submission of Claims for Those Applicants Living in Hawaii and the Territory of Guam?

Currently, individuals residing in the State of Hawaii and the Territory of Guam must submit the Form I–589, Application for Asylum and Withholding of Removal, to the Nebraska Service Center. After the jurisdiction change becomes effective, individuals residing in the State of Hawaii and the Territory of Guam must submit the Form I–589 to the California Service Center. The Service will notify the public of this change in submission requirements through a separate notice published in the **Federal Register** and through an attachment to the Form I–589 sent out by the INS Forms Centers. The Service will continue to conduct asylum interviews in the State of Hawaii and the Territory of Guam; however, asylum officers from the Los Angeles Asylum Office will conduct the interviews rather than officers from the San Francisco Asylum Office.

#### What Will Happen to Applications Filed With the Nebraska Service Center Before the Change in Jurisdiction Becomes Effective?

Before the jurisdiction change becomes effective asylum applications are submitted to the Nebraska Service Center. Accepted applications are receipted, entered into the Service computer systems, and a file is created. These files are sent to the San Francisco Asylum Office where the case is

scheduled for an interview and asylum officers are sent out to Guam and Hawaii to conduct asylum interviews. Applicants are notified of the decision by mail.

#### What Will Happen to Those Applications Filed With the Nebraska Service Center After the Change in Jurisdiction Becomes Effective?

After the jurisdiction change becomes effective, the Nebraska Service Center will continue to accept asylum applications filed by applicants residing in the State of Hawaii and the Territory of Guam for 30 days after the effective date of this rule. Pending cases will be transferred to the Los Angeles Asylum Office for interview scheduling and interviews. Applications received 31 days after the effective date of this rule will be rejected due to the tight statutory and regulatory time constraints governing the adjudication of asylum applications. Rejected applications will contain a notice explaining that asylum applications must be resubmitted to the California Service Center. Rejected applications are not considered filed for work authorization purposes or for interview scheduling until they are properly resubmitted to the California Service Center.

#### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this rule is administrative in nature and merely transfers jurisdiction for processing asylum applications. This rule applies to individuals submitting applications and does not affect small entities as that term is defined in 5 U.S.C. 601(6).

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions



of the Unfunded Mandates Reform Act of 1995.

#### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

#### Executive Order 12612

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

#### Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### List of Subjects in 8 CFR Part 100

Organization of functions (Government agencies).

Accordingly, part 100 of chapter I of Title 8 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

**Authority:** 8 U.S.C. 1103; 8 CFR part 2.

2. In § 100.4, paragraphs (f)(7) and (f)(8) are revised to read as follows:

#### § 100.4 Field Offices.

\* \* \* \* \*

(f) \* \* \*

(7) *Los Angeles, California.* The Asylum Office in Los Angeles has jurisdiction over the States of Arizona, the southern portion of California as listed in § 100.4(b)(16) and § 100.4(b)(39), Hawaii, the southern portion of Nevada currently within the jurisdiction of the Las Vegas Suboffice, and the Territory of Guam.

(8) *San Francisco, California.* The Asylum Office in San Francisco has jurisdiction over the northern part of California as listed in § 100.4(b)(13), the portion of Nevada currently under the jurisdiction of the Reno Suboffice, and the States of Alaska, Oregon, and Washington.

Dated: November 24, 1999.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 99-31693 Filed 12-7-99; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-SW-64-AD]

#### Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron Canada (BHTC) Model 407 helicopters. This proposal would require replacing a certain hydraulic relief valve (valve) with a different valve. This proposal is prompted by the discovery of a manufacturing defect in a valve. The actions specified by the proposed AD are intended to prevent intermittent loss of hydraulic pressure to the flight controls and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before February 7, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98-SW-64-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9:00

a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463-3036, fax (514) 433-0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

#### FOR FURTHER INFORMATION CONTACT:

Robert McCallister, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0170, telephone (817) 222-5121, fax (817) 222-5961.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98-SW-64-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98-SW-64-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

#### Discussion

Transport Canada, which is the airworthiness authority for Canada, has



notified the FAA that an unsafe condition may exist on BHTC Model 407 helicopters. Transport Canada advises that a manufacturing defect was found in a valve, part number (P/N) 206-076-036-101. The defect could lead to an intermittent loss of hydraulic pressure to the flight controls. The AD requires replacing the valve with an airworthy valve, P/N 206-076-036-105.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 407-98-20, dated July 3, 1998, which specifies replacing all valves, part number (P/N) 206-076-036-101, with a better valve, P/N 206-076-036-105. Transport Canada classified this alert service bulletin as mandatory and issued AD CF-98-28, dated August 31, 1998, in order to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 407 helicopters of the same type design registered in the United States, the proposed AD would require removing valves, P/N 206-076-036-101, and replacing them with valves, P/N 206-076-036-105. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

The FAA estimates that 146 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per helicopter to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$1,380. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$210,240.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the

various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption

#### ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**Bell Helicopter Textron Canada:** Docket No. 98-SW-64-AD.

**Applicability:** Model 407 helicopters, serial numbers 53000 through 53266, inclusive, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

**Compliance:** Required within 300 hours time-in-service, unless accomplished previously.

To prevent intermittent loss of hydraulic pressure to the flight controls and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the hydraulic relief valve (valve), part number (P/N) 206-076-036-101, and replace it with an airworthy valve, P/N 206-076-036-105, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407-98-20, dated July 3, 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD CF-98-28, dated August 31, 1998.

Issued in Fort Worth, Texas, on December 2, 1999.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 99-31818 Filed 12-7-99; 8:45 am]

BILLING CODE 4910-13-U

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NE-44-AD]

RIN 2120-AA64

#### Airworthiness Directives; Pratt & Whitney Canada PT6A Series Turboshaft Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney Canada PT6A series turboprop engines that have certain turbine exhaust ducts that were modified by Standard Aero Limited (SAL) of Winnipeg, Canada before September 1, 1997. This proposal would

require initial and repetitive inspections for cracks and, if necessary, replacing the duct if the cracks exceed allowable limits. This proposal is prompted by reports of cracks along the weld seams of certain turbine exhaust ducts. The actions specified by the proposed AD are intended to prevent failure of the turbine exhaust duct due to cracking that could result in possible separation of the reduction gearbox and propeller from the engine, and possible loss of control of the airplane.

**DATES:** Comments must be received by February 7, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-44-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ane-adcomment@faa.gov". Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7176, fax (781) 238-7199.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE-44-AD." The postcard will be date stamped and returned to the commenter.

##### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-44-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

##### **Discussion**

Transport Canada (TC), which is the airworthiness authority for Canada, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Pratt & Whitney Canada (P&WC) PT6A series turboprop engines. TC advises the FAA that certain exhaust ducts part number (P/N) 3012290, P/N 3031988, P/N 3032117, P/N 3035784, P/N 3035786, P/N 3105890-01, P/N 3112167-01, P/N 3112171-01, and P/N 3111780-01 were modified before September 1, 1997, by Standard Aero Limited (SAL) of Winnipeg, Canada, using the alternate gas tungsten arc welding (GTAW) process instead of the resistance (seam or stitch) weld process that were specified in P&WC service bulletin (SB) 1430. Some of those ducts have experienced cracking that may be attributed to the GTAW process. TC issued AD CF-98-41 on November 26, 1998, in order to assure the airworthiness of these P&WC PT6A series turboprop engines in Canada.

##### **Bilateral Airworthiness Agreement**

These engine models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TC has kept the FAA informed of the situation described above. The FAA has examined the findings of TC, has reviewed all available information, and has determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

##### **Requirements of this AD**

Since an unsafe condition has been identified that is likely to exist or develop on other PT6A series turboprop engines of the same type design registered in the United States, the proposed AD would require initial and

repetitive visual inspections of certain turbine exhaust ducts P/N 3012290, P/N 3031988, P/N 3032117, P/N 3035784, P/N 3035786, P/N 3105890-01, P/N 3112167-01, P/N 3112171-01, and P/N 3111780-01, that were modified using a GTAW procedure by SAL before September 1, 1997.

##### **Cost Impact**

There are approximately 22,000 engines of the affected design in the worldwide fleet. The FAA estimates that 7,000 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to determine if an affected duct is installed, and that it would take approximately 20 hours to replace an affected duct. There are approximately 116 engines worldwide that may have an affected duct installed, however, it is not known how many of those engines are installed on airplanes of U.S. registry. The average labor rate is \$60 per work hour. Required parts would cost approximately \$32,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$840,000 to determine if an affected duct is installed on an engine, and \$3,851,200 to replace the ducts if all ducts are installed in engines that are installed on airplanes of U.S. registry. The estimated total economic impact may be \$4,691,200.

##### **Regulatory Impact**

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Pratt & Whitney Canada:** Docket No. 99-NE-44-AD.

**Applicability:** Pratt & Whitney Canada (P&WC) PT6A series turboprop engines with certain exhaust ducts part number (P/N) 3012290, P/N 3031988, P/N 3032117, P/N 3035784, P/N 3035786, P/N 3105890-01, P/N 3112167-01, P/N 3112171-01, and P/N 3111780-01, that were modified before September 1, 1997, by Standard Aero Limited (SAL) of Winnipeg, Canada. These engines are installed on, but not limited to, Beechcraft King Air-90 and -100 series, Bombardier DHC-6 series, Empresa Braselira de Aeronautica, S.A. (Embraer) EMB-110 series, Pilatus PC-6 series, and Piper PA-42 series airplanes.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the turbine exhaust duct due to cracking that could result in possible separation of the reduction gearbox and propeller from the engine, and possible loss of control of the airplane, accomplish the following:

### Inspection of Exhaust Duct

(a) If the exhaust duct was not modified before September 1, 1997, by SAL of Winnipeg, Canada, using the gas tungsten arc weld (GTAW) process of P&WC service

bulletin (SB) 1430, no further action is required

**Note 2:** Engine log books, engine maintenance records, etc., can be used to determine if the duct was modified before September 1, 1997, by SAL of Winnipeg, Canada, using the GTAW process of P&WC SB 1430.

(b) If the exhaust duct P/N 3012290, P/N 3031988, P/N 3032117, P/N 3035784, P/N 3035786, P/N 3105890-01, P/N 3112167-01, P/N 3112171-01, and P/N 3111780-01 was modified before September 1, 1997 by SAL using the GTAW process of P&WC SB 1430, or if it cannot be determined if the GTAW process was used in complying with P&WC SB 1430, do the following within 100 hours time-in-service (TIS) after the effective date of this AD:

### Initial Visual Inspection of Affected Exhaust Ducts for Cracks

(1) Use 5X magnification to visually inspect the circumference of the forward area of the exhaust duct from the propeller reduction gearbox mounting flange to 2 inches aft of the flange for any crack indications. Return the duct to service or replace with a serviceable part as follows:

(i) If no cracks are found, the duct may be returned to service. Or,

(ii) If three or less cracks are found, and the total cumulative length of the cracks exceeds 2.0 inches, replace the duct with a serviceable part. Or,

(iii) If any one crack exceeds 1.0 inches in length, replace the duct with a serviceable part. Or,

(iv) If any two cracks are separated by less than six times the length of the longest crack (6L) or by less than 3.0 inches, whichever is less, replace the duct with a serviceable part. Or,

(v) If more than three cracks are found, replace the duct with a serviceable part.

(2) Mark all allowable cracks, on the duct, with a suitable metal marking pencil.

**Note 3:** Marking materials that are suitable for use on the the exhaust duct may be found in the P&WC Engine Manual.

(3) Record the length of the crack, location, number of duct hours, and time since overhaul (TSO).

### Repetitive Visual Inspection of Affected Exhaust Ducts for Cracks

(c) Repeat the inspection specified in paragraph (b)(1) as follows:

(1) For ducts that did not exhibit any cracking at the last inspection, repeat the inspection within 150 hours TIS since the last inspection. Return the duct to service or replace with a serviceable part as specified in paragraph (b)(1)(i) through paragraph (b)(2).

(2) For ducts that exhibited cracking at the last inspection, repeat the inspection within 25 hours TIS since the last inspection. Return the duct to service or replace with a serviceable part as follows:

(i) For new cracks that have developed since the last inspection, return the duct to service or replace with a serviceable part as specified in paragraph (b)(1)(ii) through paragraph (b)(3).

(ii) Inspect cracks that were recorded as specified in paragraph (b)(2). Return the duct

to service or replace with a serviceable part as specified in paragraph (b)(1)(ii) through paragraph (b)(2). In addition, if the growth rate of an existing crack exceeds 0.015 inch per hour TIS since the last inspection, replace the duct with a serviceable part.

### Optional Terminating Action

(d) Replacing an affected exhaust duct with a serviceable part constitutes terminating action for the repetitive inspection requirements of this AD.

### Definition of a Serviceable Exhaust Duct

(e) For the purposes of this AD, a serviceable duct is defined as a duct that has been modified per P&WC SB 1430, but did not use the GTAW process.

### Alternative Method of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

### Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 1, 1999.

**Thomas A. Boudreau,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 99-31816 Filed 12-7-99; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99-NE-11-AD]

RIN 2120-AA64

## Airworthiness Directives; Turbomeca Makila 1 Series Turboshaft Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Turbomeca Makila 1 series turboshaft engines. This proposal would require a one-time visual inspection of the scavenge and lubrication systems for

obstruction due to coke deposits, then reconditioning of the engine oil system prior to return to service. This proposal is prompted by report of an in-flight engine shutdown due to roller bearings contaminated by certain types of detergent oil. The actions specified by the proposed AD are intended to prevent in-flight engine shutdown due to roller bearing failure following oil contamination.

**DATES:** Comments must be received by February 7, 2000.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-11-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ane-adcomment@faa.gov". Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00, fax (33) 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:**

Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7132, fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE-11-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-11-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

**Discussion**

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Turbomeca Makila 1 series turboshaft engines. The DGAC advises that it has received a report of an in-flight engine shutdown due to roller bearings contaminated by 7.5 cSt oil followed by a more detergent 5 cSt oil. The investigation revealed coke accumulating in the rear bearing chamber. These coke deposits caused complete or partial obstruction of the scavenge and lubrication systems, causing the roller bearings of the M03 and M05 modules to be damaged. This condition, if not corrected, can result in in-flight engine shutdown due to roller bearing failure following oil contamination.

**Service Information**

Turbomeca has issued Service Bulletin Makila 1 (SB) No. A298 71 0137, dated December 22, 1997, that specifies procedures for visual inspection of the scavenge and lubrication systems for obstruction due to coke deposits, and reconditioning of the engine oil system. The DGAC classified this SB as mandatory and issued airworthiness directive (AD) 98-075(A), dated February 11, 1998, in order to assure the airworthiness of these engines in France.

**Bilateral Airworthiness Agreement**

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to

this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Proposed Actions**

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require a one-time visual inspection of the scavenge and lubrication systems for obstruction due to coke deposits, then reconditioning of the engine oil system prior to return to service. The actions would be required to be accomplished in accordance with the SB described previously.

**Economic Analysis**

There are approximately 1,076 engines of the affected design in the worldwide fleet. The FAA estimates that 5 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per engine to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$4,200.

**Regulatory Impact**

This proposal does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption  
**ADDRESSES.**

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Turbomeca:** Docket No. 99-NE-11-AD.

**Applicability:** Turbomeca Makila 1A and 1A1 series turboshaft engines, installed on but not limited to Aerospatiale AS 332 Super Puma, AS 532 Cougar, and SA 330 Puma helicopters.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent in-flight engine shutdown due to roller bearing failure following oil contamination, accomplish the following:

#### Inspection and Repair

(a) Within 25 hours time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) For engines that have been operated with 7.5 cSt oil for more than 100 hours TIS, and for engines whose operators can not show documentation that the engine has been operated with 7.5 cSt oil for 100 hours or less TIS, accomplish the following:

(i) Perform a one-time visual inspection of the scavenge and lubrication systems for obstruction due to coke deposits and repair as required, in accordance with section 2.A. and 2.B. of the "Instructions for incorporation" section of Turbomeca Makila 1 Service Bulletin (SB) No. A298 71 0137, dated December 12, 1997.

(ii) Replace the oil with approved oil other than 7.5 cSt and then recondition and check the engine oil system in accordance with section 2.C. and 2.D.(1) of Turbomeca Makila 1 SB No. A298 71 0137, dated December 12, 1997, prior to return to service.

(2) For engines that have been operated with 7.5 cSt oil for 100 hours or less TIS, replace the oil with approved oil other than 7.5 cSt and then recondition the engine oil system prior to return to service, in accordance with section 1.A.(2)(b) of Turbomeca Makila 1 SB No. A298 71 0137, dated December 12, 1997.

#### Alternative Method of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

#### Ferry Flights

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 1, 1999.

**Thomas A. Boudreau,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 99-31815 Filed 12-7-99; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NE-33-AD]

RIN 2120-AA64

#### Airworthiness Directives; Turbomeca Artouste III Series Turboshaft Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Turbomeca Artouste III series turboshaft engines. This proposal would require smoke emissions checks after every ground engine shutdown. If smoke is detected, this AD would require inspecting for fuel flow. If fuel

flow is not detected, the engine may have injection wheel cracks, which would require removing the engine from service for repair; if fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which would require removing the electric fuel cock from service and replacing with a serviceable part. This proposal is prompted by reports of cracked injection wheels. The actions specified by the proposed AD are intended to prevent injection wheel cracks, which could result in an in-flight engine shutdown.

**DATES:** Comments must be received by February 7, 2000.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-33-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ane-adcomment@faa.gov". Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone +33 05 59 64 40 00, fax +33 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

#### FOR FURTHER INFORMATION CONTACT:

Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7132, fax (781) 238-7199.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE-33-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-33-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

#### Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Turbomeca Artouste III B-B1-D series turboshaft engines. The DGAC advises that cracks have been reported on the rear face of the injection wheels, which can lead to fuel leakage into the turbine shaft tube during operation. When the engine is shut down, fuel flows into the combustion chamber, which could result in a slight increase of rundown time and/or emissions of smoke through the exhaust pipe, the air intake, or the turbine casing drain after the rotating assembly has stopped. This condition may be caused by the thermal stresses to which the injection wheel is subjected or a malfunctioning electric fuel cock. These conditions, if not corrected, could result in injection wheel cracks, which could result in an in-flight engine shutdown.

#### Service Information

Turbomeca has issued Artouste III Service Bulletin (SB) No. 218 72 0099, dated September 14, 1998, that specifies procedures for smoke emission checks, and fuel flow inspections if smoke is detected. The DGAC classified this SB as mandatory and issued AD 98-432(A) in order to assure the airworthiness of these engines in France.

#### Bilateral Airworthiness Agreement

This engine model is manufactured in France and is type certificated for operation in the United States under the

provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which would require removing the engine from service for repair; if fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which would require removing the electric fuel cock from service and replacing with a serviceable part. The actions would be required to be accomplished in accordance with the SB described previously.

#### Economic Analysis

There are approximately 2,279 engines of the affected design in the worldwide fleet. The FAA estimates that 184 engines installed on rotorcraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per engine to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$3,500 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$655,040.

#### Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Turbomeca:** Docket No. 99-NE-33-AD.

*Applicability:* Turbomeca Artouste III B-B1-D series turboshaft engines, installed on but not limited to Eurocopter SA 315 LAMA and SA 316 Alouette III helicopters.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent injection wheel cracks, which could result in an in-flight engine shutdown, accomplish the following:

#### Smoke Check

(a) Following every engine ground shutdown, accomplish the following in accordance with Turbomeca Artouste III Service Bulletin (SB) No. 218 72 0099, dated September 14, 1998:

(1) After every flight, check for smoke emissions through the exhaust pipe, air

intake, or turbine casing drain during rundown and after every engine shutdown. If a smoke emission has been noticed, check the fuel system before the next flight to identify the origin of the smoke emissions.

(2) If smoke is not detected, no action is required until the next engine ground shutdown.

(3) If smoke is detected, inspect for fuel flow in accordance with paragraph 2.B.(1) and 2.B.(2) of the SB.

(i) If fuel flow is not detected, prior to further flight, remove the engine from service and replace with a serviceable engine.

(ii) If fuel flow is detected, remove the electric fuel cock from service and replace with a serviceable part in accordance with section 2.B.(4) and 2.B.(5) of the referenced SB.

(iii) Before entry into service, perform an engine ground run and check the fuel system again for smoke emissions through the exhaust pipe, air intake, or turbine casing drain during engine rundown and after shutdown; if smoke emissions still remain after replacement of the electric fuel cock, prior to further flight, remove the engine from service and replace with a serviceable engine.

(b) For the purpose of this AD, a serviceable engine is defined as an engine that does not exhibit smoke emissions.

#### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

#### Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the rotorcraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 1, 1999.

**Thomas A. Boudreau,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 99-31814 Filed 12-7-99; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-SW-54-AD]

#### Airworthiness Directives; MD Helicopters Inc. Model MD600N Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) applicable to MD Helicopters Inc. (MDHI) Model MD600N helicopters. This proposal would require inspecting each internal fuel hose connection to verify proper installation. This proposal is prompted by the discovery that certain fuel hose connections between the fuel cells and the engine can be incorrectly installed. The actions specified by the proposed AD are intended to prevent fuel starvation of the engine while the fuel gage indicates fuel remaining in the tank, engine flameout, and a subsequent forced landing.

**DATES:** Comments must be received on or before February 7, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW-54-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615-GO48, Mesa, Arizona 85215-9797, telephone 1-800-388-3378 or 480-891-6342, datafax 480-891-6782. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Bruce Conze, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627-5261, fax (562) 627-5210.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-SW-54-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW-54-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

#### Discussion

This document proposes the adoption of a new AD applicable to MDHI Model MD600N helicopters, serial numbers with a prefix of "RN" 003 through 045. This AD would require inspecting each internal fuel hose connection to verify appropriate installation. The manufacturer discovered, during a company production flight test, that certain fuel hose connections between the fuel cells and the engine were incorrectly installed. The manufacturer is currently attempting to develop new hoses that would eliminate the possibility of incorrectly installing the internal fuel hose connections. Such hoses, if developed, would replace the hoses currently in use. In the interim, a one-time inspection of each internal fuel hose connection for proper installation is necessary within 100 hours TIS. This condition, if not corrected, could result in fuel starvation of the engine while the gage indicates fuel remaining in the



tank, engine flameout, and a subsequent forced landing.

The FAA has reviewed MDHI Service Bulletin SB600N-025, dated July 2, 1999, which describes procedures for inspecting the fuel system to verify proper fuel line connections between the fuel cells and the engine.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHI Model MD600N helicopters of the same type design, the proposed AD would require inspecting the internal fuel hose connections to ensure appropriate installation. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 40 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$19,200.

The regulations adopted herein will not impose substantial direct compliance costs on states or local governments or have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the FAA has not consulted with States or local authorities prior to the publication of this notice.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**MD Helicopters, Inc.:** Docket No. 99-SW-54.

**Applicability:** Model MD600N helicopters, serial numbers with a prefix of "RN" 003 through 045, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent fuel starvation of the engine while the fuel gage indicates fuel remaining in the tank, engine flameout, and a subsequent forced landing, accomplish the following:

(a) Within 100 hours time-in-service, verify that the internal fuel hose connections have been properly installed in accordance with either Method A or Method B of the Accomplishment Instructions of MD Helicopters Service Bulletin SB 600N-025, dated July 2, 1999 (ASB). Prior to further flight, make any necessary corrections.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on December 1, 1999.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 99-31817 Filed 12-7-99; 8:45 am]

**BILLING CODE 4910-13-M**

#### RAILROAD RETIREMENT BOARD

##### 20 CFR Part 222

##### RIN 3220-AB40

#### Family Relationships

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to amend its regulations on determining whether a natural child has inheritance rights under appropriate state law and therefore may be entitled to railroad retirement benefits as the child of an insured employee. The Board also proposes to clarify its regulation regarding status as a legally adopted child of an insured employee. Such revisions are necessary because of a change in the regulations of the Social Security Administration, which became effective November 27, 1998.

**DATES:** Comments must be received on or before February 7, 2000.

**ADDRESSES:** Comments should be addressed to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Senior Attorney, (312) 751-4513, TDD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** Section 2(d)(4) of the Railroad Retirement Act (RRA) references section 216(h) of the Social Security Act for purposes of determining whether an individual is the child of the insured employee for entitlement to a surviving child's annuity. In addition, the Board must look to the Social Security Act to determine the status of a child for increasing a disability annuitant's annuity under the social security overall minimum provided in section 3(f)(3) of the RRA. See part 229 of this chapter. Section 216(h)(2)(A) of the Social Security Administration (SSA) looks to the law of the state in which the wage earner was domiciled regarding the devolution of intestate personal property to determine who would be a child for inheritance purposes.

The SSA has announced final regulations which revise its procedures



for determining whether a child has inheritance rights under the appropriate state law and, thus, may be entitled to social security benefits as the child of an insured worker (63 FR 57590, October 28, 1998). Specifically, those rules have been revised to explain which state law will be applied, how SSA will apply state law requirements on time limits for determining inheritance rights, and how it will apply state law requirements for a court determination of paternity. The current rule on determining an applicant's status as a legally adopted child of an insured individual is also clarified. As a consequence, the Board must amend part 222 of its regulations, which deals with determining family relationships, to conform to SSA's new regulations.

The Board proposes to revise § 222.32 to provide that the status of child will be determined by applying the state inheritance law of the employee's domicile that is in effect when the claim for benefits is adjudicated. If the child does not have inheritance rights under that version of state law, the state law that was in effect when the insured died will be examined to determine if the status of child is met at that time.

Many state laws impose time limits within which someone must act to establish paternity for purposes of intestate succession in order to ensure the orderly administration of estates. Proposed § 222.32 makes it clear that the Board will disregard these time limits since the purpose served by the limits is not relevant to the adjudication of benefits under the RRA. If the applicable inheritance law requires a formal determination of paternity to establish the status of child, proposed § 222.32 provides that the Board will not require such a formal determination, but will rather make its own determination of paternity based upon the requirements of state law.

A "child" under the RRA includes an adopted child. The proposed amendment to § 222.33 clarifies that in determining whether an individual is the legally adopted child of the employee, the Board will apply the adoption laws, rather than the inheritance laws, of the state or foreign country where the adoption took place.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. There are no information collections associated with this rule.

## List of Subjects in 20 CFR Part 222

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II of the Code of Federal Regulations as follows:

## PART 222—FAMILY RELATIONSHIPS

1. The authority citation for part 222 continues to read as follows:

**Authority:** 45 U.S.C. 231f.

2. Section 222.31 is revised to read as follows:

### § 222.31 Relationship as child for annuity and lump-sum payment purposes.

(a) *Annuity claimant.* When there are claimants under paragraph (a)(1), (a)(2), or (a)(3) of § 222.30, a person will be considered the child of the employee when that person is—

- (1) The natural or legally adopted child of the employee (see § 222.33); or
- (2) The stepchild of the employee; or
- (3) The grandchild or step-grandchild of the employee or spouse; or
- (4) The equitably adopted child of the employee.

(b) *Lump-sum payment claimant.* A claimant for a lump-sum payment must be one of the following in order to be considered the child of the employee:

- (1) The natural child of the employee;
- (2) A child legally adopted by the employee (this does not include any child adopted by the employee's widow or widower after the employee's death); or
- (3) The equitably adopted child of the employee. For procedures on how a determination of the person's relationship to the employee is made, see §§ 222.32–222.33.

3. Section 222.32 is revised to read as follows:

### § 222.32 Relationship as a natural child.

A claimant will be considered the natural child of the employee for both annuity and lump-sum payment purposes if one of the following sets of conditions is met:

(a) Under relevant state inheritance law, the claimant could inherit a share of the employee's personal estate as the employee's natural child if the employee were to die without leaving a will as described in paragraph (e) of this section;

(b) The claimant is the employee's natural son or daughter, and the employee and the claimant's mother or father went through a marriage ceremony which would have been valid except for a legal impediment;

(c) The claimant's natural mother or father has not married the employee, but—

(1) The employee has acknowledged in writing that the claimant is his or her son or daughter; or

(2) A court has decreed that the employee is the mother or father of the claimant; or

(3) A court has ordered the employee to contribute to the claimant's support because the claimant is the employee's son or daughter; and,

(4) Such acknowledgment, court decree, or court order was made not less than one year before the employee became entitled to an annuity, or in the case of a disability annuitant prior to his or her most recent period of disability, or in case the employee is deceased, prior to his or her death. The written acknowledgment, court decree, or court order will be considered to have occurred on the first day of the month in which it actually occurred.

(d) The claimant's natural mother or father has not married the employee, but—

(1) The claimant has submitted evidence acceptable in the judgment of the Board, other than that discussed in paragraph (c) of this section, that the employee is his or her natural mother or father; and

(2) The employee was living with the claimant or contributing to the claimant's support, as discussed in §§ 222.58 and 222.42 of this part, when—

(i) The spouse applied for an annuity based on having the employee's child in care; or

(ii) The employee's annuity could have been increased under the social security overall minimum provision; or

(iii) The employee died, if the claimant is applying for a child's annuity or lump-sum payment.

(e) *Use of state laws.* (1) *General.* To determine whether a claimant is the natural child of the employee, the state inheritance laws regarding whether the claimant could inherit a child's share of the employee's personal property if he or she were to die intestate will apply. If such laws would permit the claimant to inherit the employee's personal property, the claimant will be considered the child of the employee. The state inheritance laws where the employee was domiciled when he or she died will apply. If the employee's domicile was not in one of the 50 states, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands, the laws of the District of Columbia will apply.

(2) *Standards.* The Board will not apply any state inheritance law requirement that an action to establish paternity must have been commenced within a specific time period, measured from the employee's death or the child's birth, or that an action to establish paternity must have been commenced or completed before the employee's death. If state laws on inheritance require a court to determine paternity, the Board will not require such a determination, but the Board will decide paternity using the standard of proof that the state court would apply as the basis for making such a determination.

(3) *Employee is living.* If the employee is living, the Board will apply the state law where the employee is domiciled which was in effect when the annuity may first be increased under the social security overall minimum (see part 229 of this chapter). If under a version of state law in effect at that time, a person does not qualify as a child of the employee, the Board will look to all versions of state law in effect from when the employee's annuity may first have been increased until the Board makes a final decision, and will apply the version of state law most favorable to the employee.

(4) *Employee is deceased.* The Board will apply the state law where the employee was domiciled when he or she died. The Board will apply the version of state law in effect at the time of the final decision on the application for benefits. If under that version of state law the claimant does not qualify as the child of the employee, the Board will apply the state law in effect when the employee died, or any version of state law in effect from the month of potential entitlement to benefits until a final determination on the application. The Board will apply the version most beneficial to the claimant. The following rules determine the law in effect as of the employee's death:

(i) Any law enacted after the employee's death, if that law would have retroactive application to the employee's date of death, will apply; or

(ii) Any law that supersedes a law declared unconstitutional, that was considered constitutional on the employee's date of death, will apply.

4. A new paragraph (c) is added to § 222.33 to read as follows:

**§ 222.33 Relationship resulting from legal adoption.**

\* \* \* \* \*

(c) The adoption laws of the state or foreign country where the adoption took place, not the state inheritance laws, will determine whether the claimant is the employee's adopted child.

Dated: November 29, 1999.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 99-31791 Filed 12-7-99; 8:45 am]

BILLING CODE 7905-01-P

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

**29 CFR Part 2700**

**Procedural Rules**

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Federal Mine Safety and Health Review Commission is extending the comment period for a notice of proposed rulemaking published on November 10, 1999 (64 FR 61236-39). On November 10, 1999, the Commission proposed to amend its procedural rules by adding a new rule setting forth settlement procedures which are intended to facilitate and promote the pre-hearing settlement of contested cases that come before the Commission. The new procedures would be instituted as a pilot program for a two-year trial period. In response to a request by the Department of Labor's Office of the Solicitor, the Commission is extending the comment period for 30 days.

**DATES:** Comments must be received in writing on or before January 10, 2000.

**ADDRESSES:** Comments should be submitted to Norman M. Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006. For the convenience of persons who will be reviewing the comments, it is requested that commenters provide an original and three copies of their comments.

**FOR FURTHER INFORMATION CONTACT:** Norman M. Gleichman, General Counsel, 202-653-5610 (202-653-2673 for TDD relay). These are not toll-free numbers. Dated: December 1, 1999.

Mary Lu Jordan,

Chairman.

[FR Doc. 99-31790 Filed 12-7-99; 8:45 am]

BILLING CODE 6735-01-P

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Part 280**

**RIN 1010-AC48**

**Prospecting for Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule specifies how to conduct Geological and Geophysical (G&G) prospecting and research for minerals other than oil, gas, and sulphur in the Outer Continental Shelf (OCS) under a permit; requires everyone conducting G&G scientific research in the OCS without a permit to file a notice with us; informs small operators of environmental laws and regulations for safe and sound practices; and rewrites the proposed rule in plain English. These revisions respond to changes in technology and practice.

**DATES:** We will consider all comments we receive by February 7, 2000. We will begin reviewing comments then and may not fully consider comments we receive after February 7, 2000.

**ADDRESSES:** If you wish to comment, you may mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817; Attention: Rules Processing Team. The Rules Processing Team's e-mail address is: [rules.comments@MMS.gov](mailto:rules.comments@MMS.gov).

Mail or hand-carry comments with respect to the information collection burden of the proposed rule to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Desk Officer for the Department of the Interior (OMB control number 1010-0072); 725 17th Street, N.W., Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Keith Meekins, Resource Evaluation Division, at (703) 787-1517.

**SUPPLEMENTARY INFORMATION:** The Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331 *et seq.*) is the basis for our regulations to administer G&G prospecting and scientific research activities in the OCS. Section 11(a) of the OCSLA provides authority for the Secretary of the Interior to allow any person to conduct G&G explorations in the OCS if the explorations:

(1) Do not interfere with or endanger operations under a lease covered by the OCSLA; and

(2) Are not unduly harmful to aquatic life in the area.

The regulations at 30 CFR part 280 implement the Secretary's authority for prospecting for minerals other than oil, gas, and sulphur. They prescribe:

(1) Requirements for a permit or statement of intent (notice) to conduct G&G prospecting or scientific research in the OCS;

(2) Operating procedures for conducting prospecting or scientific research;

(3) Conditions for reimbursing permittee for certain costs;

(4) Other conditions for conducting prospecting and research; and

(5) Procedures for drilling deep stratigraphic tests in the OCS.

Our intent is to create parallelism with the regulations for G&G exploration on the OCS for oil, gas, and sulphur (30 CFR part 251), and we welcome comments on this.

#### **Background for Expanding the Notice Requirement**

We developed the revised requirement for a notice before conducting any G&G scientific research to address instances in which academic and other institutions conduct research and:

(1) They or industry sponsors hold the data and analyze and process information as proprietary; and

(2) They also offer for sale at least some data and information.

We define activities that meet these criteria as G&G prospecting and do not consider them G&G scientific research. A permit is required for prospecting. For these reasons, we need the expanded notice requirement to inform us of any G&G scientific research conducted on the OCS related to minerals other than oil, gas, and sulphur. After receiving the notice, we will inform those conducting research of all necessary environmental regulations and laws. In this way, the researcher will be better able to follow safe and environmentally sound practices.

#### **Discussion of Proposed Rule**

These revisions bring 30 CFR part 280—Prospecting for Minerals Other Than Oil, Gas, and Sulphur—up to date with recent changes in the related regulations at 30 CFR part 251.

Section 280.1 of the proposed regulation updates the definition list by removing unnecessary words and adding, modifying, or expanding definitions.

Section 280.11 explains that a notice will be required for all G&G scientific research related to minerals other than oil, gas, and sulphur conducted in the

OCS, except for research requiring a permit.

Section 280.12 clarifies that at the earliest possible time, the data and information acquired through scientific research will be made available to the public by the permittee or person filing a notice.

Section 280.13 provides the current addresses of our regional offices as filing locations for permit applications and notices.

Section 280.22 specifies that a permittee must request in writing to modify or extend operations and could proceed with the modifications only after the Regional Director approves them.

Section 280.24 directs a permittee to submit status reports on a schedule specified in the permit rather than monthly. This would allow variations in the reporting requirements among OCS Regions.

Section 280.24 requires that the final report contain digital navigational data in a format the Regional Director specifies in addition to charts, maps, and plats.

Section 280.24 requires that a permittee report any hard minerals, hydrocarbon, or sulphur occurrences encountered.

Section 280.31 requires us to notify the Governor(s) of adjacent State(s) in cases where a Coastal Zone Consistency Review is required.

Sections 280.40, 280.41, 280.50, and 280.51, respectively, break out, for clarification, procedures for submission, inspection, and selection of G&G data and information.

Sections 280.42 and 280.52 clarify that any transfer of G&G data and information to a third party would transfer the obligations to provide access to us as well. When the third party accepts the transfer, they must also accept the obligation to provide access and are subject to the penalty provisions of 30 CFR part 250, subpart N, if they fail to do so.

Section 280.60 requires us to reimburse permittees or third parties for reasonable costs of reproducing data and information that the Regional Director requests.

Section 280.71 requires the Regional Director to disclose geological data and information to the public 10 years after issuing the permit.

The requirement for submission of a prospecting plan has been eliminated as that data and information will now be submitted as part of the permit form itself.

#### **Procedural Matters**

##### *Public Comment Procedure*

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

##### *Federalism (Executive Order (E.O.) 13132)*

According to E.O. 13132, the proposed rule does not have Federalism implications. A Federalism assessment is not required as the proposed rule does not change the role or responsibilities between the Federal, State, or local governments and, therefore, does not have direct, substantive, or significant effects on the States.

##### *Takings Implications Assessment (E.O. 12630)*

According to E.O. 12630, the proposed rule does not have significant Takings implications.

A Takings implication assessment is not required because the proposed rule would not take away or restrict an operators right to collect data and information under the permit terms.

##### *Regulatory Planning and Review (E.O. 12866)*

According to the criteria in E.O. 12866, this proposed rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB).

a. This proposed rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This is due to the small amount of activity currently being experienced in offshore prospecting as well as the smaller size of the companies involved as compared to those involved in oil, gas, and sulphur exploration. We estimate that

this rule will affect only one entity per year, and that the total cost to regulated entities for complying with this rule will be approximately \$3,000 per year. For full details, see the information under the heading "Regulatory Flexibility Act."

b. This proposed rule does not create inconsistencies with other agencies' actions because there are no changes in requirements. The notification process will allow the customer to know of the operations of other users in the area. In addition, current regulations are consistent with other agencies' actions.

c. This proposed rule is an administrative change that will not affect entitlements, grants, user fees, loan programs, or their recipients. This proposed rule has no effect on these programs or rights of the programs' recipients.

d. This proposed rule does not raise any novel legal or policy issues. As previously stated, the intent of this proposed rule is to establish consistency in all prelease activities for all minerals on the OCS.

#### *Clarity of This Regulation*

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the proposed rule clearly stated?
- (2) Does the proposed rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?
- (4) Would the proposed rule be easier to understand if it were divided into more (but shorter) sections?
- (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else can we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

#### *Civil Justice Reform (E.O. 12988)*

According to E.O. 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the

requirements of §§ 3(a) and 3(b)(2) of the Order.

#### *National Environmental Policy Act*

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

#### *Paperwork Reduction Act (PRA) of 1995*

This proposed rule contains a collection of information that has been submitted to OMB for review and approval under § 3507(d) of the PRA. As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs; OMB; Attention: Desk Officer for the Department of the Interior (OMB control number 1010-0072); Washington, DC 20503. Send a copy of your comments to the Rules Processing Team, Engineering and Operations Division; Mail Stop 4024; Minerals Management Service; 381 Elden Street; Herndon, Virginia 20170-4817. You may obtain a copy of the supporting statement for the collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208-7744.

The PRA provides that an agency may not conduct or sponsor, and you are not required, to respond to a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision to approve or disapprove this collection of information between 30 to 60 days after publication of this document. Therefore, your comments are best assured of being considered by OMB if OMB receives them by January 7, 2000. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

The title of this collection of information is "30 CFR Part 280, Prospecting for Minerals other than Oil, Gas, and Sulphur in the OCS." OMB had previously approved the information collection requirements in the current 30 CFR part 280 regulations under OMB control number 1010-0072. However, the OMB approval has expired. Our submission to OMB requests that OMB reinstate control number 1010-0072 based upon the information collection requirements in this proposed rule.

The proposed rule contains the following primary information collection requirements with the estimated hour burden for each shown in parentheses.

(a) Sections 280.12 and 280.13: Submit permit application (form MMS-134) to conduct G&G prospecting for hard minerals or file notice to conduct scientific research activities (6 hours).

(b) Section 280.22: Submit modification of approved operations (0.5 hour).

(c) Section 280.24: Submit status and final reports (8 hours).

(d) Section 280.28: Request relinquishment of permit (1 hour).

(e) Sections 280.40, 280.41, 280.50, and 280.51: Submit G&G data/information collected under a permit and/or processed by permittees or third parties (4 hours).

(f) Sections 280.42 and 280.52: Notify MMS of third-party transactions (0.5 hour).

(g) Sections 280.60 and 280.61: Request reimbursement for costs of reproducing data/information and certain processing costs (20 hours).

The proposed rule contains a few other minor information collection aspects. However, we anticipate either no responses over a 3-year period or that the burden would be very minimal.

Respondents would be hard mineral permittees or notice filers. The frequency of response is on occasion, with the exception of the status reports. The frequency of those will be specified in the permit. We estimate only one respondent per year and a total annual reporting and recordkeeping burden of 88 hours. Responses are required to obtain or retain a benefit. We will protect information considered confidential or proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at § 280.71 and applicable sections of 30 CFR parts 250 and 252.

We need and use the information to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs.

We will summarize written responses to this notice and address them in the final rule. All comments will become a matter of public record.

1. We specifically solicit comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the PRA requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. We need your comments on this item. Your response should split the cost estimate into two components: (a) total capital and startup cost component; and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

#### *Regulatory Flexibility Act*

The changes to 30 CFR part 280 should not have a significant economic effect. The rulemaking may involve small businesses or small entities if they want to perform prospecting activities or scientific research on the OCS. The Small Business Administration defines a *small business* as having the following:

- annual revenues of \$5 million or less for service companies and colleges and universities; and
- less than 500 employees for companies that extract natural resources (*i.e.*, sand and gravel).

In many ways, we try to offer customer service at no cost to smaller companies that are active on the OCS. These services include informing

customers of environmental laws and regulations, making permit applications available on the Internet, making various offshore maps and stipulations accessible, etc.

There are no changes or effects with respect to the number of people performing the activities nor is there any change with regard to technology or operating costs. Changes in this proposed rule make it parallel to the prelease exploration regulations covering oil, gas, and sulphur (30 CFR part 251). In applying for a permit, we will not require a prospecting plan. Information previously required for a prospecting plan will be submitted as a part of the permit itself. Operators will need to submit a notice for all scientific research. The proposed rule also breaks out, for clarification, procedures for submission, inspection, and selection of G&G data and information, as well as clarifying the responsibilities of third parties. It also requires us to reimburse permittees or third parties for reasonable costs for reproducing data and information that we request.

We expect that either one company will apply for a prospecting permit or one institution will file a notice of intent to conduct scientific research per year, based on MMS receiving six applications for a prospecting permit in the last 10 years. Previous activities in these areas indicate that most of these entities would be considered small.

The primary economic effect on small businesses is the cost associated with information collection activities. The only major change in reporting requirements would represent a small increase, not for those engaged in the mineral industry but, rather, for those involved in scientific research. This increased reporting requirement relates to the filing of a notice for all scientific research activities. The current regulations are silent on this issue. We estimate that the new requirements will result in filing one notice per year. Each notice would require 6 hours to prepare, at a cost of \$35 per hour, for a total cost of \$210 per notice, which would also be the total annual cost. These numbers would also represent the total cost for a permit. These figures may be compared to similar ones for oil, gas, and sulphur activities, whose numbers are 24 to 36 hours for a total cost of \$840 to \$1,260.

In our proposed information collection budget for this proposed rule, we estimate the total burden in complying with these regulations to be 88 hours for a total \$3,080. Cost does not vary with the size of the company. We compare these figures with those for oil, gas, and sulphur activities, which

are 10,604 hours for a total of \$371,140. In addition, because of the small numbers of entities expected to engage in these activities at this time, the number of small businesses that would experience a significant economic effect is not substantial. As a result, this proposed rule will not have a significant economic effect on a substantial number of small entities.

We should note that this proposed rule only applies to preliminary prelease prospecting activities. As long as sufficient sources for economically recoverable mineral resources exist onshore, the higher costs of offshore development will constrain industry. To develop and produce even the relatively easier minerals (sand and gravel), large investments of up to \$15 to \$25 million will be necessary for technology and establishing both land-based processing and marketing facilities. Currently, sand and gravel are being dredged from the OCS to support large-scale public works projects to nourish beaches. These projects are authorized and funded by Federal, State, and local governments and, to date, there have been only two or three commercial aggregate producers who have expressed an interest in future OCS development.

Locating and delineating offshore mineral resources can be expensive, depending on how much is already known about an offshore area. A prospecting program to collect seismic information and to collect a number of 20-foot cores of sediment can cost approximately \$100,000 to \$400,000. Compared to the magnitude of these costs, the costs associated with the requirements of this proposed rule are relatively small. Given the high costs of mineral prospecting, we expect an applicant's time and expense in order to comply with information collection on a prelease prospecting permit to represent only a small fraction of the total costs of locating, assessing, and developing offshore strategic minerals.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734-3247.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This proposed rule is not a major rule under the (5 U.S.C. 804(2)), SBREFA. This proposed rule:

(a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises. This is based upon the small amount of activity currently being experienced in offshore prospecting as well as the smaller size of the companies involved as compared with those involved in oil, gas, and sulphur exploration.

*Unfunded Mandate Reform Act (UMRA) of 1995*

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The proposed rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.* is not required.

**List of Subjects in 30 CFR Part 280**

Continental shelf, Freedom of information, Prospecting, Public lands—mineral resources, Reporting and recordkeeping requirements, Research.

Dated: October 20, 1999.

**Sylvia V. Baca,**

*Acting Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to revise 30 CFR part 280 as follows:

**PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF**

**Prospecting and Scientific Research in the Outer Continental Shelf**

**Subpart A—General Information**

Sec.

280.1 What definitions apply to this part?

280.2 What is the purpose of this part?

280.3 What requirements must I follow when I conduct prospecting or research activities?

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**Authority:** 43 U.S.C. 1331 *et seq.*, 42 U.S.C. 4332 *et seq.*

**Subpart A—General Information**

**§ 280.1 What definitions apply to this part?**

Definitions in this part have the following meaning:

*Act* means OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

*Adjacent State* means with respect to any activity proposed, conducted, or approved under this part, any coastal State(s):

(1) That is used, or is scheduled to be used, as a support base for geological and geophysical (G&G) prospecting or scientific research activities; or

(2) In which there is a reasonable probability of significant effect on land or water uses from such activity.

*Analyzed geological information* means data collected under a permit or a lease that have been analyzed. Some examples of analysis include, but are not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of mineral occurrences or hazardous conditions.

*Archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

*Archaeological resource* means any material remains of human life or activities that are at least 50 years of age and are of archaeological interest.

*Coastal environment* means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

*Coastal zone* means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) that are strongly influenced by each other and in proximity to the shorelands of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the

outer limit of the U.S. territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, under the authority in section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972.

*Coastal Zone Management Act* means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).

*Data* means facts and statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

*Deep stratigraphic test* means drilling that involves the penetration into the sea bottom of more than 500 feet (152 meters).

*Director* means the Director of the Minerals Management Service, U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

*Geological and geophysical (G&G) prospecting activities* means the commercial search for mineral resources other than oil, gas, or sulphur. Activities classified as prospecting include, but are not limited to:

(1) Geological and geophysical marine and airborne surveys where magnetic, gravity, seismic reflection, seismic refraction, or the gathering through coring or other geological samples are used to detect or imply the presence of hard minerals; and

(2) Any drilling, whether on or off a geological structure.

*Geological and geophysical (G&G) scientific research activities* means any investigation related to hard minerals that is conducted in the OCS for academic or scientific research. These investigations would involve gathering and analyzing geological, geochemical, or geophysical data and information that are made available to the public for inspection and reproduction at the earliest practical time. The term does not include commercial G&G exploration or commercial G&G prospecting activities.

*Geological sample* means a collected portion of the seabed, the subseabed, or the overlying water acquired while conducting prospecting or scientific research activities.

*Governor* means the Governor of a State or the person or entity lawfully designated by or under State law to exercise the powers granted to a Governor under the Act.

*Hard minerals* means any minerals found on or below the surface of the seabed except for oil, gas, or sulphur.

*Interpreted geological information* means the knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geological data and analyzed and processed geologic information.

*Interpreted geophysical information* means knowledge, often in the form of seismic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

*Lease* means, depending upon the requirements of the context, either:

(1) An agreement issued under section 8 or maintained under section 6 of the Act that authorizes mineral exploration, development and production; or

(2) The area covered by an agreement specified in paragraph (1) of this definition.

*Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which evidence is situated.

*Minerals* means all minerals authorized by an Act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702). The term includes oil, gas, sulphur, geopressured-geothermal and associated resources.

*Notice* means a written statement of intent to conduct G&G scientific research that is:

(1) Related to hard minerals in the OCS; and

(2) Not covered under a permit.

*Oil, gas, and sulphur* means oil, gas, and sulphur, geopressured-geothermal and associated resources.

*Outer Continental Shelf (OCS)* means all submerged lands—

(1) That lie seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301); and

(2) Whose subsoil and seabed belong to the United States and are subject to its jurisdiction and control.

*Permit* means the contract or agreement, other than a lease, issued under this part. The permit gives a person the right, under appropriate statutes, regulations, and stipulations, to conduct on the OCS:

(1) Geological prospecting for hard minerals;

(2) Geophysical prospecting for hard minerals;

(3) Geological scientific research; or

(4) Geophysical scientific research.

*Permittee* means the person authorized by a permit issued under this part to conduct activities on the OCS.

*Person* means—

(1) A citizen or a national of the United States;

(2) An alien lawfully admitted for permanent residence in the United States as defined in section 8 U.S.C. 1101(a)(20);

(3) A private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof, and association of such citizens, nationals, resident aliens or private, public, or municipal corporations, States, or political subdivisions of States; or

(4) Anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal agencies.

*Processed geological or geophysical information* means data collected under a permit and later processed or reprocessed.

(1) Processing involves changing the form of data as to facilitate interpretation. Some examples of processing operations may include, but are not limited to:

(i) Applying corrections for known perturbing causes;

(ii) Rearranging or filtering data; and

(iii) Combining or transforming data elements.

(2) Reprocessing is the additional processing other than ordinary processing used in the general course of evaluation. Reprocessing operations may include varying identified parameters for the detailed study of a specific problem area.

*Secretary* means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

*Shallow test drilling* means drilling into the sea bottom to depths less than those specified in the definition of a deep stratigraphic test.

*Significant archaeological resource* means those archaeological resources that meet the criteria of significance for eligibility of the National Register of Historic Places as defined in 36 CFR 60.4.

*Third party* means any person other than the permittee or a representative of the United States, including all persons who obtain data or information acquired under a permit from the permittee, or from another third party, by sale, trade, license agreement, or other means.

*You* means a person who applies for and/or obtains a permit, or files a notice to conduct G&G prospecting or scientific research related to hard minerals in the OCS.



**§ 280.2 What is the purpose of this part?**

The purpose of this part is to:

(a) Allow you to conduct prospecting activities or scientific research activities in the OCS relating to hard minerals on unleased lands or on lands under lease to a third party.

(b) Ensure that you carry out prospecting activities or scientific research activities in a safe and environmentally sound manner so as to prevent harm or damage to, or waste of, any natural resources (including any hard minerals in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(c) Inform you and third parties of your legal and contractual obligations.

(d) Inform you and third parties of:

(1) The U.S. government's rights to access G&G data and information collected under permit in the OCS;

(2) Reimbursement we will make for data and information that are submitted; and

(3) The proprietary terms of data and information that we retain.

**§ 280.3 What requirements must I follow when I conduct prospecting or research activities?**

You must conduct G&G prospecting activities or scientific research activities under this part according to:

(a) The Act;

(b) The regulations in this part;

(c) Orders of the Director/Regional Director; and

(d) Other applicable statutes, regulations, and amendments.

**§ 280.4 What activities are not covered by this part?**

This part does not apply to:

(a) G&G prospecting activities conducted by, or on behalf of, the lessee on a lease in the OCS.

(b) Federal agencies.

(c) G&G exploration or G&G scientific research activities related to oil, gas, and

sulphur which are covered by regulations at 30 CFR part 251.

**Subpart B—How To Apply for a Permit or File a Notice****§ 280.10 What must I do before I can conduct prospecting activities?**

You must have an MMS-approved permit to conduct G&G prospecting activities, including deep stratigraphic tests, for hard minerals. If you conduct both geological and geophysical prospecting activities, you must have a separate permit for each.

**§ 280.11 What must I do before I can conduct scientific research?**

You may conduct G&G scientific research activities related to hard minerals in the OCS only after you obtain an MMS-approved permit or file a notice.

(a) *Permit.* You must obtain a permit if the research activities you want to conduct involve:

(1) Using solid or liquid explosives;

(2) Drilling a deep stratigraphic test;

or

(3) Developing data and information for proprietary use or sale.

(b) *Notice.* If you conduct research activities not covered by paragraph (a) of this section, you must file a notice with the Regional Director at least 30 days before you begin. If you cannot file a 30-day notice, you must provide oral notification before you begin and follow up in writing. You must also inform MMS in writing when you conclude your work.

**§ 280.12 What must I include in my application or notification?**

(a) *Permits.* You must submit to the Regional Director a signed original and three copies of the permit application (form MMS-134) at least 30 days before the startup date for activities in the permit area. If unusual circumstances prevent you from meeting this deadline, you must immediately contact the Regional Director to arrange an

acceptable deadline. The form includes names of persons, type, location, purpose, and dates of activity, as well as environmental and other information.

(b) *Disapproval of permit application.* If we disapprove your application for a permit, the Regional Director will tell you why and tell you what you need to do to obtain approval.

(c) *Notices.* You must sign and date a notice that includes:

(1) The name(s) of the person(s) who will conduct the proposed research;

(2) The name(s) of any other person(s) participating in the proposed research, including the sponsor;

(3) The type of research and a brief description of how you will conduct it;

(4) A map, plat, or chart, that shows the location where you will conduct research;

(5) The proposed projected starting and ending dates for your research activity;

(6) The name, registry number, registered owner, and port of registry of vessels used in the operation;

(7) The earliest practical time you expect to make the data and information resulting from your research activity available to the public;

(8) Your plan of how you will make the data and information you collect available to the public;

(9) A statement that you and others involved will not sell or withhold the data and information resulting from your research; and

(10) At your option, the nonexclusive use agreement for scientific research attachment to form MMS-134. (If you submit this agreement, you do not have to submit the material required in paragraphs (c)(7), (c)(8), and (c)(9) of this section.)

**§ 280.13 Where must I send my application or notification?**

You must apply for a permit or file a notice at one of the following locations:

For the OCS off the—	Apply to—
(a) State of Alaska .....	Regional Supervisor for Resource Evaluation, Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4363.
(b) Atlantic Coast, Gulf of Mexico, Puerto Rico, or U.S. territories in the Caribbean Sea.	Regional Supervisor for Resource Evaluation, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.
(c) States of California, Oregon, Washington, Hawaii, or U.S. territories in the Pacific Ocean.	Regional Supervisor for Resource Evaluation, Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, California 93010-6064.



## Subpart C—Obligations Under This Part

### Prohibitions and Requirements

#### § 280.20 What may I not do?

While conducting G&G prospecting or scientific research activities under a permit or notice, you must not:

(a) Interfere with or endanger operations under any lease, right-of-way, easement, right-of-use, notice, or permit issued or maintained under the Act;

(b) Cause harm or damage to life (including fish and other aquatic life), property, or the marine, coastal, or human environment;

(c) Cause harm or damage to any mineral resources (in areas leased or not leased);

(d) Cause pollution;

(e) Disturb archaeological resources;

(f) Create hazardous or unsafe conditions;

(g) Unreasonably interfere with or cause harm to other uses of the area; or

(h) Claim any oil, gas, sulphur, or other minerals you discover while conducting operations under a permit or notice.

#### § 280.21 What must I do?

While conducting G&G prospecting or scientific research activities under a permit or notice, you must:

(a) Immediately report to the Regional Director if you:

(1) Detect hydrocarbon or any other mineral occurrence;

(2) Detect environmental hazards that imminently threaten life and property; or

(3) Adversely affect the environment, aquatic life, archaeological resources, or other uses of the area where you are prospecting or conducting scientific research activities.

(b) Consult and coordinate your G&G activities with other users of the area for navigation and safety purposes.

(c) If you conduct shallow test drilling or deep stratigraphic test drilling activities, use the best available and safest technologies that the Regional Director considers economically feasible.

#### § 280.22 What must I do when seeking approval for modifications?

Before you begin modified operations, you must submit a written request describing the modifications and receive the Regional Director's oral or written approval. If circumstances preclude a written request, you must make an oral request and follow up in writing.

#### § 280.23 How must I cooperate with inspection activities?

You must allow our representatives to inspect your G&G prospecting or any

scientific research activities that are being conducted under a permit. They will determine whether operations are adversely affecting the environment, aquatic life, archaeological resources, or other uses of the area. We will reimburse you for food, quarters, and transportation that you provide for our representatives if you send in your reimbursement request to the Region that issued the permit within 90 days of the inspection.

#### § 280.24 What reports must I file?

(a) You must submit status reports on a schedule specified in the permit and include a daily log of operations.

(b) You must submit a final report of G&G prospecting or scientific research activities under a permit within 30 days after you complete acquisition activities under the permit. You may combine the final report with the last status report and must include each of the following:

(1) A description of the work performed.

(2) Charts, maps, plats and digital navigation data in a format specified by the Regional Director, showing the areas and blocks in which any G&G prospecting or permitted scientific research activities were conducted. Identify the lines of geophysical traverses and their locations including a reference sufficient to identify the data produced during each activity.

(3) The dates on which you conducted the actual prospecting or scientific research activities.

(4) A summary of any:

(i) Hard mineral, hydrocarbon, or sulphur occurrences encountered;

(ii) Environmental hazards; and

(iii) Adverse effects of the G&G prospecting or scientific research activities on the environment, aquatic life, archaeological resources, or other uses of the area in which the activities were conducted.

(5) Other descriptions of the activities conducted as specified by the Regional Director.

### Interrupted Activities

#### § 280.25 When can MMS require me to stop activities under this part?

(a) We may temporarily stop prospecting or scientific research activities under a permit when the Regional Director determines that:

(1) Activities pose a threat of serious, irreparable, or immediate harm. This includes damage to life (including fish and other aquatic life), property, and any minerals (in areas leased or not leased), to the marine, coastal, or human environment, or to an archeological resource;

(2) You failed to comply with any applicable law, regulation, order or

provision of the permit. This would include our required submission of reports, well records or logs, and G&G data and information within the time specified; or

(3) Stopping the activities is in the interest of national security or defense.

(b) The Regional Director will advise you either orally or in writing of the procedures to temporarily stop activities. We will confirm an oral notification in writing and deliver all written notifications by courier or certified/registered mail. You must stop all activities under a permit as soon as you receive an oral or written notification.

#### § 280.26 When can I resume activities?

The Regional Director will advise you when you may start your permit activities again.

#### § 280.27 When can MMS cancel my permit?

The Regional Director may cancel, or a permittee may relinquish, a permit at any time.

(a) If we cancel your permit, the Regional Director will advise you by certified or registered mail 30 days before the cancellation date and will state the reason.

(b) After we cancel your permit, you are still responsible for proper abandonment of any drill site according to the requirements of 30 CFR 251.7(b)(8). You must comply with all other obligations specified in this part or in the permit.

#### § 280.28 Can I give up my permit?

(a) You may relinquish the permit by advising the Regional Director by certified or registered mail 30 days in advance.

(b) After you relinquish your permit, you are still responsible for proper abandonment of any drill sites according to the requirements of 30 CFR 251.7(b)(8). You must also comply with all other obligations specified in this part or in the permit.

### Environmental Issues

#### § 280.29 Will MMS monitor the environmental effects of my activity?

We will evaluate the potential of proposed prospecting or scientific research activities for adverse impact on the environment to determine the need for mitigation measures.

#### § 280.30 What activities will not require environmental analysis?

We anticipate that activities of the type listed in this section typically will

not cause significant environmental impact and will normally be categorically excluded from additional environmental analysis. The types of activities include:

- (a) Gravity and magnetometric observations and measurements;
- (b) Bottom and subbottom acoustic profiling or imaging without the use of explosives;
- (c) Hard minerals sampling of a limited nature such as shallow test drilling;
- (d) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species or if permitted by the National Marine Fisheries Service or another Federal agency;
- (e) Meteorological observations and measurements, including the setting of instruments;
- (f) Hydrographic and oceanographic observations and measurements, including the setting of instruments;
- (g) Sampling by box core or grab sampler to determine seabed geological or geotechnical properties;
- (h) Television and still photographic observation and measurements;
- (i) Shipboard hard mineral assaying and analysis; and
- (j) Placement of positioning systems, including bottom transponders and surface and subsurface buoys reported in Notices to Mariners.

#### **§ 280.31 Whom will MMS notify about environmental issues?**

(a) In cases where Coastal Zone Consistency Review is required, the Director will notify the Governor of each adjacent State with a copy of the application for a permit immediately upon the submission for approval.

(b) In cases where an environmental assessment is to be prepared, the Director will invite the Governor of each adjacent State to review and provide comments regarding the proposed activities. The Director's invitation to provide comments will allow the Governor a specified period of time to comment.

(c) When a permit is issued, the Director will notify affected parties including each affected coastal State, Federal agency, local government, and special interest organization that has expressed an interest.

#### **Penalties and Appeals**

#### **§ 280.32 What penalties may I be subject to?**

(a) *Penalties for noncompliance under a permit.* You are subject to the penalty provisions of:

- (1) Section 24 of the Act (43 U.S.C. 1350); and

(2) The procedures contained in 30 CFR part 250, subpart N, for noncompliance with:

- (i) Any provision of the Act;
- (ii) Any provisions of a G&G or drilling permit; or
- (iii) Any regulation or order issued under the Act.

(b) *Penalties under other laws and regulations.* The penalties prescribed in this section are in addition to any other penalty imposed by any other law or regulation.

#### **§ 280.33 How can I appeal a penalty?**

See 30 CFR part 290 for instructions on how to appeal any order or decision that we issue under this part.

#### **Subpart D—Data Requirements**

##### **Geological Data and Information**

#### **§ 280.40 When do I notify MMS that geological data and information are available for submission, inspection, and selection?**

(a) You must notify the Regional Director, in writing, when you complete the initial analysis, processing, or interpretation of any geological data and information. Initial analysis and processing are the stages of analysis or processing where the data and information first become available for in-house interpretation by the permittee or become available commercially to third parties via sale, trade, license agreement, or other means.

(b) The Regional Director may ask if you have further analyzed, processed, or interpreted any geological data and information. When asked, you must respond to us in writing within 30 days.

(c) The Regional Director may ask the permittee or third party to submit the analyzed, processed, or interpreted geologic data and information for us to inspect or permanently retain. You must submit the data and information within 30 days after such a request.

#### **§ 280.41 What types of geological data and information must I submit to MMS?**

Unless the Regional Director specifies otherwise, you must submit geological data and information that include:

(a) An accurate and complete record of all geological (including geochemical) data and information describing each operation of analysis, processing, and interpretation;

(b) Paleontological reports identifying by depth any microscopic fossils collected, including the reference datum to which paleontological sample depths are related and, if the Regional Director requests, washed samples, that you maintain for paleontological determinations;

(c) Copies of well logs or charts in a digital format, if available;

(d) Results and data obtained from formation fluid tests;

(e) Analyses of core or bottom samples and/or a representative cut or split of the core or bottom sample;

(f) Detailed descriptions of any hydrocarbons or other minerals or hazardous conditions encountered during operations, including near losses of well control, abnormal geopressures, and losses of circulation; and

(g) Other geological data and information that the Regional Director may specify.

#### **§ 280.42 When geological data and information are obtained by a third party, what must I and the third party do?**

A third party may obtain geological data and information from a permittee, or from another third party, by sale, trade, license agreement, or other means. If this happens:

(a) The third-party recipient of the data and information assumes the obligations under this part, except for the notification provisions of § 280.40(a) and is subject to the penalty provisions of § 280.32(a)(1) and 30 CFR part 250, subpart N; and

(b) A permittee or third party that sells, trades, licenses, or otherwise provides data and information to a third party must advise the recipient, in writing, that accepting these obligations is a condition precedent of the sale, trade, license, or other agreement; and

(c) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the Regional Director in writing within 30 days of the sale, trade, or other agreement, including the identity of the recipient of the data and information; or

(d) For license agreements, a permittee or third party that licenses data and information to a third party must, within 30 days of a request by the Regional Director, advise the Regional Director, in writing, of the license agreement, including the identity of the recipient of the data and information.

##### **Geophysical Data and Information**

#### **§ 280.50 When do I notify MMS that geophysical data and information are available for submission, inspection, and selection?**

(a) You must notify the Regional Director in writing when you complete the initial processing and interpretation of any geophysical data and information. Initial processing is the stage of processing where the data and information become available for in-house interpretation by the permittee, or

become available commercially to third parties via sale, trade, license agreement, or other means.

(b) The Regional Director may ask whether you have further processed or interpreted any geophysical data and information. When asked, you must respond to us in writing within 30 days.

(c) The Regional Director may request that the permittee or third party submit geophysical data and information before making a final selection for retention. Our representatives may inspect and select the data and information on your premises, or the Regional Director can request delivery of the data and information to the appropriate regional office for review.

(d) You must submit the geophysical data and information within 30 days of receiving the request, unless the Regional Director extends the delivery time.

(e) At any time before final selection, the Regional Director may review and return any or all geophysical data and information. We will notify you in writing of any data the Regional Director decides to retain.

#### **§ 280.51 What types of geophysical data and information must I submit to MMS?**

Unless the Regional Director specifies otherwise, you must include:

(a) An accurate and complete record of each geophysical survey conducted under the permit, including digital navigational data and final location maps;

(b) All seismic data collected under a permit presented in a format and of a quality suitable for processing;

(c) Processed geophysical information derived from seismic data with extraneous signals and interference removed, presented in a quality format suitable for interpretive evaluation, reflecting state-of-the-art processing techniques; and

(d) Other geophysical data, processed geophysical information, and interpreted geophysical information including, but not limited to, shallow and deep subbottom profiles, bathymetry, sidescan sonar, gravity and magnetic surveys, and special studies such as refraction and velocity surveys.

#### **§ 280.52 When geophysical data and information are obtained by a third party, what must I and the third party do?**

A third party may obtain geophysical data, processed geophysical information, or interpreted geophysical

information from a permittee, or from another third party, by sale, trade, license agreement, or other means. If this happens:

(a) The third-party recipient of the data and information assumes the obligations under this part, except for the notification provisions of § 280.50(a) and is subject to the penalty provisions of § 280.32(a)(1) and 30 CFR 250, subpart N; and

(b) A permittee or third party that sells, trades, licenses, or otherwise provides data and information to a third party must advise the recipient, in writing, that accepting these obligations is a condition precedent of the sale, trade, license, or other agreement; and

(c) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the Regional Director, in writing within 30 days of the sale, trade, or other agreements, including the identity of the recipient of the data and information; or

(d) For license agreements, a permittee or third party that licenses data and information to a third party must, within 30 days of a request by the Regional Director, advise the Regional Director, in writing, of the license agreement, including the identity of the recipient of the data and information.

#### **Reimbursement**

##### **§ 280.60 Which of my costs will be reimbursed?**

(a) We will reimburse you or a third party for reasonable costs of reproducing data and information that the Regional Director requests if:

(1) You deliver G&G data and information to us for the Regional Director to inspect or select and retain (according to §§ 280.40 and 280.50);

(2) We receive your request for reimbursement and the Regional Director determines that the requested reimbursement is proper; and

(3) The cost is at your lowest rate (or a third party's) or at the lowest commercial rate established in the area, whichever is less.

(b) We will reimburse you or the third party for the reasonable costs of processing geophysical information (which does not include cost of data acquisition) if, at the request of the Regional Director, you processed the geophysical data or information in a form or manner other than that used in the normal conduct of business.

##### **§ 280.61 Which of my costs will not be reimbursed?**

(a) When you request reimbursement, you must identify reproduction and processing costs separately from acquisition costs.

(b) We will not reimburse you or a third party for data acquisition costs or for the costs of analyzing or processing geological information or interpreting geological or geophysical information.

#### **Protections**

##### **§ 280.70 What data and information will be protected from public disclosure?**

(a) In making data and information available to the public, the Regional Director will follow the applicable requirements of:

(1) The Freedom of Information Act (5 U.S.C. 552);

(2) The implementing regulations of 43 CFR part 2;

(3) The Act; and

(4) The regulations at 30 CFR parts 250 and 252.

(b) If the Regional Director determines that any data or information is exempt from disclosure under the Freedom of Information Act, we will not disclose the data and information unless either:

(1) You and all third parties agree to the disclosure; or

(2) A provision of 30 CFR parts 250 and 252 allows us to make the disclosure.

(c) We will keep confidential the identity of third-party recipients of data and information collected under a permit. We will not release the identity unless you and the third parties agree to the disclosure.

(d) When you detect any significant hydrocarbon occurrences or environmental hazards on unleased lands during drilling operations, the Regional Director will immediately issue a public announcement. The announcement must further the national interest without unduly damaging your competitive position.

##### **§ 280.71 What is the timetable for release of data and information?**

We will release data and information that you or a third party submits and we retain according to paragraphs (a) and (b) of this section.

(a) If the data and information are not related to a deep stratigraphic test, we will release them to the public according to the following table:

If you or a third party submits and we retain—	The Regional Director will disclose them to the public—
(1) Geological data and information .....	10 years after issuing the permit.
(2) Geophysical data .....	50 years after you or a third party submit the data.
(3) Geophysical information .....	25 years after you or a third party submit the information.
(4) Data and information related to a deep stratigraphic test.	25 years after you complete the test, unless the provisions of paragraph (b) of this section apply.

(b) This paragraph applies if you are covered by paragraph (a)(4) of this section and a lease sale is held or a noncompetitive agreement is negotiated after you complete a test well. We will release the data and information related to the deep stratigraphic test at the earlier of the following times:

- (1) Twenty-five years after you complete the test; or
- (2) Sixty calendar days after we issue a lease, located partly or totally within 50 geographic miles (92.7 kilometers) of the test.

#### **§ 280.72 How will MMS disclose data and information?**

(a) When practical, the Regional Director will advise the person who submitted data and information under § 280.40 or 280.50 of the intent to disclose the data or information to an independent contractor or agent.

(b) The person notified will have at least 5 working days to comment on the action.

(c) When the Regional Director advises the person who submitted the data and information, all other owners of the data or information will be considered to have been notified.

(d) Before disclosure, the contractor or agent must sign a written commitment not to sell, trade, license, or disclose data or information to anyone without the Regional Director's consent.

#### **§ 280.73 Will MMS share data and information with coastal States?**

(a) We can disclose proprietary data, information, and samples submitted to us by permittees or third parties that we receive under this part to the Governor of any adjacent State that requests it according to paragraphs (b), (c), and (d) of this section.

(b) We will make a disclosure under this section only after the Governor and the Secretary have entered into an agreement containing all of the following provisions:

- (1) The confidentiality of the information will be maintained.
- (2) In any action taken for failure to protect the confidentiality of proprietary information, neither the Federal Government nor the State may raise as a defense:
  - (i) Any claim of sovereign immunity; or
  - (ii) Any claim that the employee who revealed the proprietary information

was acting outside the scope of his/her employment in revealing the information.

(3) The State agrees to hold the Federal Government harmless for any violation by the State or its employees or contractors of the agreement to protect the confidentiality of proprietary data and information and samples.

(4) The materials containing the proprietary data, information, and samples will remain the property of the Federal Government.

(c) The data, information, and samples available for reproduction to the State(s) under an agreement must be related to leased lands. Data and information on unleased lands may be viewed but not copied or reproduced.

(d) The State must return to us the materials containing the proprietary data, information, and samples when we ask for them or when the State no longer needs them.

(e) Information received and knowledge gained by a State official under paragraph (d) of this section is subject to confidentiality requirements of:

- (1) The Act; and
- (2) The regulations at 30 CFR parts 280, 281, and 282.

#### **Subpart E—Information Collection**

##### **§ 280.80 Paperwork Reduction Act statement—information collection.**

(a) OMB has approved the information collection requirements in this part under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010-0072. The title of this information collection is “30 CFR Part 280, Prospecting for Minerals other than Oil, Gas, and Sulphur in the Outer Continental Shelf.”

(b) We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(c) We use the information collected under this part to:

- (1) Evaluate permit applications and monitor scientific research activities for environmental and safety reasons.
- (2) Determine that prospecting does not harm resources, result in pollution, create hazardous or unsafe conditions, or interfere with other users in the area.
- (3) Approve reimbursement of certain expenses.

(4) Monitor the progress and activities carried out under an OCS prospecting permit.

(5) Inspect and select G&G data and information collected under an OCS prospecting permit.

(d) Respondents are Federal OCS permittees and notice filers. Responses are mandatory or are required to obtain or retain a benefit. We will protect information considered proprietary under applicable law and under regulations at § 280.70 and 30 CFR part 281.

(e) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, N.W., Washington, D.C. 20240.

[FR Doc. 99-31695 Filed 12-7-99; 8:45 am]

BILLING CODE 4310-MR-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 50 and 81**

[FRL-6505-3]

#### **Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice to Reopen Comment Period.

**SUMMARY:** The EPA is reopening the comment period for the notice of proposed rulemaking (NPR) that was published on October 25, 1999 (64 FR 57424) regarding the rescinding of findings made by EPA that the 1-hour national ambient air quality standard (NAAQS) for ozone no longer applies in certain areas and which was further clarified on November 18, 1999 (64 FR 63002). The October 25 proposal established a 30-day comment period, which ended on December 1. The EPA believes this provided an adequate opportunity to comment on the specific issues identified in the proposal. However, in response to requests from the public, EPA is reopening the comment period to January 3, 2000.

**DATES:** The EPA is reopening the comment period to end on January 3, 2000, which is 30 days after the date today's notice was signed and made available on EPA's web site at <http://www.epa.gov/airlinks>. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible). Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the comment period.

**ADDRESSES:** Comments may be submitted to the Office of Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-99-22, U.S. Environmental Protection Agency, 401 M Street SW, room M-1500, Washington, DC 20460, telephone (202) 260-7548. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information (CBI) should be submitted through e-mail.

Documents relevant to this action are available for inspection at the Docket Office, at the above address, between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable copying fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning today's action should be addressed to Annie Nikbakht, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD-15, Research Triangle Park, NC, 27711, telephone (919) 541-5246.

#### **SUPPLEMENTARY INFORMATION:**

##### **Availability of Related Information**

The official record for this rulemaking, as well as the public version, has been established under docket number A-99-22 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/

6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A-99-22. Electronic comments on this NPR rule may be filed online at many Federal Depository Libraries.

Additional information relevant to this proposed rulemaking is available on the Agency's Office of Air Quality Planning and Standards' (OAQPS) Technology Transfer Network (TTN) via the web at <http://www.epa.gov/ttn/>. If assistance is needed in accessing the system, call the help desk at (919) 541-5384 in Research Triangle Park, NC.

#### **I. Re-opening of Comment Period**

The EPA has received requests to reopen the comment period on the proposal that the 1-hour NAAQS no longer applies in certain areas. See Docket A-99-22, nos. IV-D-34 (Hunton & Williams, representing the Utility Air Regulatory Group) and nos. IV-D-36 (The Chamber of Commerce of the United States, William L. Kovacs). This notice responds to those requests. The commenters identified an administrative error in docketing the list of areas affected by the proposed rule. The EPA acknowledges that the list of areas was inadvertently not placed in the proper docket at the time the proposed rule was published in the **Federal Register**. The EPA has corrected this docketing problem and the list of affected areas is now available in the docket. The EPA is providing an additional 30 days for the public to comment on the proposed rule now that the list of affected areas is available in the docket.

One commenter also requested that EPA reopen the comment period to allow comments on issues identified in a Stipulation to Stay Proceedings in a legal challenge to EPA's revocation of the 1-hour ozone standard in certain areas. *Environmental Defense Fund v. Browner*, No. 98-1363, D.C. Cir., filed August 3, 1998. The issues identified in the Stipulation were as follows: (1) The proposal to modify 40 C.F.R. § 50.9(b) to provide that after the 8-hour ozone standard "become[s] fully enforceable under part D of title 1 of the Clean Air Act (CAA) and subject to no further legal challenge," the 1-hour standard will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard; (2) Whether a "fully enforceable" 8-hour standard means that CAA section 107(d) designations for ozone under the 8-hour standard will have been promulgated by the Administrator prior to any determination that the 1-hour ozone standard no longer applies to an area; (3) Whether the motor vehicle emission

budget approved or found adequate for the purpose of implementing the 1-hour ozone standard in a nonattainment area will remain in effect for transportation conformity purposes during the period after the 1-hour ozone standard no longer applies to the area but before a motor vehicle emission budget is approved or found adequate for the purpose of implementing the 8-hour ozone standard; (4) Whether the rescission of the nonapplicability determinations for certain areas should apply retroactively as well as prospectively; and (5) In the event EPA determines that the rescission will not apply retroactively, whether EPA will provide other relief to remedy any additional air pollution that may result from stationary sources and/or highway projects approved during the regulatory hiatus when the area's section 107(d) designation was not "nonattainment." The EPA believes that all of these issues were within the scope of the original proposal. The EPA included this list of issues in the Stipulation at the request of the litigants. The EPA agrees that all of these issues are within the scope of this rulemaking and thus are open for public comment during the reopened comment period.

#### **II. Public Hearing**

One commenter also requested that EPA hold a public hearing in connection with this proposed rule because the rule was allegedly subject to the public hearing requirements of section 307(d) of the CAA as a revision to a NAAQS under section 109 of the CAA. The EPA does not agree with the commenter. As EPA stated in the proposed rule, EPA was merely changing a rule that indicated when standards would be applicable, and was not revising the standards themselves. For this reason, EPA believes that the proposal is not subject to the public hearing requirements of section 307(d) and is not providing a public hearing on the proposal.

#### **List of Subjects**

##### *40 CFR Part 50*

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

##### *40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 1, 1999.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 99-31757 Filed 12-7-99; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 194

[FRL-6505-2]

RIN 2060-AG85

#### Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Hanford Site for Disposal at the Waste Isolation Pilot Plant

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability; opening of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at the Hanford site proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are entitled: "Hanford Site Transuranic Waste Characterization Quality Assurance Project Plan, HNF-2599," and "Hanford Site Transuranic Waste Certification Plan, HNF-2600." They are available for review in the public dockets listed in **ADDRESSES**. EPA will conduct an inspection of waste characterization systems and processes and the quality assurance program for waste characterization at Hanford to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. EPA will perform this inspection the week of January 10, 2000. This notice of the inspection and comment period accords with 40 CFR 194.8.

**DATES:** EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before January 7, 2000.

**ADDRESSES:** Comments should be submitted to: Docket No. A-98-49, Air Docket, Room M-1500 (LE-131), US Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A-98-49, Category II-A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at

the Municipal Library, Hours: Monday-Thursday, 10am-9pm, Friday-Saturday, 10am-6pm, and Sunday 1pm-5pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday-Friday, 9am-5pm.

As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

#### FOR FURTHER INFORMATION CONTACT:

Scott Monroe, Office of Radiation and Indoor Air, (202) 564-9310 or call EPA's toll-free WIPP Information Line, 1-800-331-WIPP.

#### SUPPLEMENTARY INFORMATION:

##### Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. No. 102-579), as amended (Pub. L. No. 104-201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) Prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR Part 194); and (2) Prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR Part 194). The EPA's approval process for waste

generator sites is described in 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with 194.8, EPA will place such documentation in the official Air Docket in Washington, D.C., and informational dockets in the State of New Mexico for public review and comment.

DOE has notified EPA that the Hanford site is preparing to ship waste to the WIPP. EPA will perform an inspection of Hanford's technical and quality assurance programs for waste characterization in accordance with Conditions 2 and 3 of the WIPP certification. The inspection is scheduled to take place the week of January 10, 2000.

EPA has placed two documents pertinent to the inspection in the public docket described in **ADDRESSES**. The documents are entitled: (1) "Hanford Site Transuranic Waste Characterization Quality Assurance Project Plan, HNF-2599," and (2) "Hanford Site Transuranic Waste Certification Plan, HNF-2600" (Items II-A2-22 and II-A2-23). In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed processes and programs at Hanford adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from Hanford to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A-93-02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: December 1, 1999.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 99-31756 Filed 12-7-99; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA No. 99-2584, MM Docket No. 99-340, RM-9778]

#### Radio Broadcasting Services; Seymour, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Seymour Radio Broadcasting Company proposing the allotment of Channel 222C2 at Seymour, Texas, to provide the community with additional FM broadcast service. The channel can be allotted to Seymour in compliance with the Commission's Rules provided there is a site restriction 4 kilometers (2.51 miles) west of the community. The coordinates for Channel 222C2 at Seymour are 33-34-49 NL and 99-18-01 WL.

**DATES:** Comments must be filed on or before January 13, 2000, and reply comments on or before January 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC. 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, 908 King Street, Suite 300, Alexandria, Virginia 22314.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-340, adopted November 10, 1999, and released November 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99-31803 Filed 12-7-99; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA No. 99-2564, MM Docket No. 99-331, RM-9728]

#### Radio Broadcasting Services; College Station and Madisonville, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Sunburst Media, LP, requesting the reallocation of Channel 241C2 from Madisonville, Texas, to College Station, Texas, and modification of the license for Station KAAG to specify College Station, Texas, as the community of license. The coordinates for Channel 241C2 at College Station are 30-45-26 and 96-24-33. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 241C2 at College Station.

**DATES:** Comments must be filed on or before January 10, 2000, and reply comments on or before January 25, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gregg P. Skall, Lee G. Petro, Pepper & Corazzini, L.L.P., 1776 K Street, NW, Suite 200, Washington, DC 20006.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-331, adopted November 10, 1999, and released November 19, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99-31804 Filed 12-7-99; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA No. 99-2582, MM Docket No. 99-338, RM-9746]

#### Radio Broadcasting Services; Shiner, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Elgin FM Limited Partnership proposing the allotment of Channel 232C3 at Shiner, Texas, as the community's first FM broadcast service. The channel can be allotted to Shiner in compliance with the Commission's Rules provided there is a site restriction 15.5 kilometers (9.7 miles) east of the community. The



coordinates for Channel 232C3 at Shiner are 29–28–50 NL and 97–19–10 WL. Mexican concurrence will be requested for the allotment at Shiner.

**DATES:** Comments must be filed on or before January 13, 2000, and reply comments on or before January 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ann C. Farhat, Bechtel & Cole Chartered, 1901 L Street, NW, Suite 250, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–338, adopted November 10, 1999, and released November 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–31805 Filed 12–7–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA No. 99–2582, MM Docket No. 99–337, RM–9524]

#### Radio Broadcasting Services; Santa Anna, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Wagonwheel Broadcasting of Santa Anna proposing the allotment of Channel 288C3 at Santa Anna, Texas, as the community's first FM broadcast service. The channel can be allotted to Santa Anna in compliance with the Commission's Rules provided there is a site restriction 12.7 kilometers (7.9 miles) south of the community. The coordinates for Channel 288C3 at Santa Anna are 31–37–38 NL and 99–20–03 WL. Mexican concurrence will be requested for this allotment.

**DATES:** Comments must be filed on or before January 13, 2000, and reply comments on or before January 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW, Suite 900, Washington, DC 20036–4192.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–337, adopted November 10, 1999, and released November 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to

Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–31806 Filed 12–7–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA No. 99–2582, MM Docket No. 99–336, RM–9758]

#### Radio Broadcasting Services; Rocksprings, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Rocksprings Radio Broadcasting Company proposing the allotment of Channel 223A at Rocksprings, Texas, as the community's first FM broadcast service. The channel can be allotted to Rocksprings in compliance with the Commission's Rules provided there is a site restriction 11.9 kilometers (7.4 miles) northwest of the community. The coordinates for Channel 223A at Rocksprings are 30–05–18 NL and 100–18–02 WL.

**DATES:** Comments must be filed on or before January 13, 2000, and reply comments on or before January 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.



99-336, adopted November 10, 1999, and released November 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99-31807 Filed 12-7-99; 8:45 am]

**BILLING CODE 6712-01-P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA No. 99-2582, MM Docket No. 99-335, RM-9771]

#### Radio Broadcasting Services; Lindale, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Wayne Blackwelder d/b/a Cafe Broadcasting, Inc. proposing the allotment of Channel 239A at Lindale, Texas, as the community's first FM broadcast service. The channel can be allotted to Lindale in compliance with the Commission's Rules provided there is a site restriction 5.4 kilometers (3.3 miles) northeast of the community. The coordinates for Channel 239A at Lindale are 32-32-09 NL and 95-21-36 WL.

**DATES:** Comments must be filed on or before January 13, 2000, and reply comments on or before January 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Wayne Blackwelder, Cafe Broadcasting, Inc., 2122 Anthony Drive, Tyler, Texas 75703.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-335, adopted November 10, 1999, and released November 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99-31808 Filed 12-7-99; 8:45 am]

**BILLING CODE 6712-01-P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA No. 99-2582, MM Docket No. 99-334, RM-9772]

#### Radio Broadcasting Services; Carney, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Escanaba License Corp. proposing the allotment of Channel 260A at Carney, Michigan, as the community's first FM broadcast service. The channel can be allotted to Carney in compliance with the Commission's Rules provided there is a site restriction 7.8 kilometers (4.9 miles) west of the community. The coordinates for Channel 260A at Carney are 45-35-30 NL and 87-39-37 WL. Canadian concurrence will be requested for the allotment at Carney.

**DATES:** Comments must be filed on or before January 13, 2000, and reply comments on or before January 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Denise B. Moline, 100 Carpenter Drive, Suite 100, P. O. Box 217, Sterling, VA 20167 and to Lyle R. Evans, President, Escanaba License Corp., 1101 A. Ludington Street, Escanaba, MI 49829.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-334, adopted November 10, 1999, and released November 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter

is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99-31809 Filed 12-7-99; 8:45 am]

BILLING CODE 6712-01-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 99-2562; MM Docket No. 99-329; RM-9701]

#### Radio Broadcasting Services; Avalon, Fountain Valley, Adelanto, Ridgecrest and Riverside, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Amaturo Group of L.A., Ltd., licensee of Stations KLIT, Channel 224A, Avalon, California, KELT, Channel 224A, Riverside, California, and KMLT, Channel 224A, Thousand Oaks, California. Petitioner seeks the following changes: (1) reallocate Channel 224A from Avalon to Fountain Valley, California, as that community's first local aural transmission service and modify the license for Station KLIT to specify operation on Channel 224A at the latter community; (2) reallocate Channel 224A from Riverside to Adelanto, California, as that community's first local aural transmission service and modify the license of Station KELT accordingly; (3) substitute Channel 224A for Channel 224B1 at Ridgecrest and modify the license of Station KZIQ-FM, at a revised transmitter site; (4) revise the reference

coordinates of Station KMLT, Channel 224A, Thousand Oaks, California, to specify 34-13-05 NL; 118-56-42 NL, to accommodate the proposed reallocation of Channel 224A to Fountain Valley. Coordinates used for Channel 224A at Fountain Valley, California, are 33-36-56 NL; 117-55-33 WL; coordinates used for Channel 224A at Adelanto, California, are 34-36-11 NL; 117-28-01 WL; coordinates used for Channel 224A at Ridgecrest, California, are 35-37-27 NL; 117-41-10 WL. As Fountain Valley and Adelanto, California, are both located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotments is required.

**DATES:** Comments must be filed on or before January 10, 2000, and reply comments on or before January 25, 2000.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Bradford D. Carey and Ashton R. Hardy, Esqs., Hardy & Carey, L.L.P., 110 Veterans Blvd., Suite 300, Metairie, Louisiana 70005.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-329, adopted November 10, 1999, and released November 19, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99-31810 Filed 12-7-99; 8:45 am]

BILLING CODE 6712-01-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA No. 99-2584, MM Docket No. 99-341, RM-9776]

#### Radio Broadcasting Services; Gwinn, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by AFB/Gwinn Broadcasting proposing the allotment of Channel 262C3 at Gwinn, Michigan, to provide the community with its first local FM broadcast service. The channel can be allotted to Gwinn in compliance with the Commission's Rules provided there is a site restriction 6.8 kilometers (4.3 miles) east of the community. The coordinates for Channel 262C3 at Gwinn are 46-17-20 NL and 87-21-10 WL. Canadian concurrence will be requested for the allotment of Channel 262C3 at Gwinn.

**DATES:** Comments must be filed on or before January 13, 2000, and reply comments on or before January 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert J. Buenzle, Law Offices of Robert J. Buenzle, 12110 Sunset Hills Road, Reston, Virginia 22090.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-341, adopted November 10, 1999, and released November 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th

Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for

rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99-31811 Filed 12-7-99; 8:45 am]

**BILLING CODE 6712-01-P**

# Notices

Federal Register

Vol. 64, No. 235

Wednesday, December 8, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 99-088-1]

#### Notice of Request for Extension of Approval of an Information Collection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations, which were issued under the Animal Welfare Act, governing the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers.

**DATES:** Comments on this notice must be received by February 7, 2000 to be assured of consideration.

**ADDRESSES:** We invite you to comment regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information. Please send your comment and three copies to: Docket No. 99-088-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 99-088-1.

You may read any comments that we receive on this docket in our comment reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW.,

Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register** and related information are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** For information on the regulations governing the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers, contact Dr. Jerry DePoyster, Animal Care Staff Officer, AC, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737-1234; (301)734-7833. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734-5086.

#### SUPPLEMENTARY INFORMATION:

*Title:* Animal Welfare.

*OMB Number:* 0579-0093.

*Expiration Date of Approval:* April 30, 2000.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Regulations have been promulgated under the Animal Welfare Act (the Act)(7 U.S.C. 2131 *et seq.*) to ensure that animals intended for use in research facilities, for exhibition purposes, or for use as pets are provided humane care and treatment. The regulations also ensure the humane treatment of animals during transportation in commerce.

The regulations at 9 CFR part 3, subparts A and D, which concern dogs, cats, and nonhuman primates, require regulated facilities to keep certain records and provide certain information. We review this information to evaluate program compliance. These records provide a workable enforcement system to carry out the requirements of the Act, and the intent of Congress, on a practical daily basis without resorting to more detailed and stringent regulations.

The reporting and recordkeeping requirements of 9 CFR, part 3, subparts A and D, do not mandate the use of any official government form.

Under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), we are asking the Office of Management and

Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average .606 hours per response.

*Respondents:* Dealers, exhibitors, carriers, handlers, and research facilities.

*Estimated annual number of respondents:* 8,200.

*Estimated annual number of responses per respondent:* 8.849.

*Estimated annual number of responses:* 72,565.

*Estimated total annual burden on respondents:* 43,975. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of December 1999.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99-31776 Filed 12-7-99; 8:45 am]

**BILLING CODE 3410-34-U**

**DEPARTMENT OF AGRICULTURE****Forest Service****John Day/Snake Resource Advisory Council, Hells Canyon Subgroup****AGENCY:** Forest Service, USDA.**ACTION:** Notice of meeting.

**SUMMARY:** The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on January 13 and 14, 2000, at the First Presbyterian Church, 1995 4th Street, Baker City, Oregon. The meeting will begin at 9:00 a.m. and continue until 5:00 p.m. the first day and will begin at 8:00 a.m. and continue until 4:00 p.m. on the second day. Agenda items to be covered include: (1) Review draft CMP alternatives and, (2) Open public forum. All meetings are open to the public. Public comments will be received at 1:30 p.m. on January 13.

**FOR FURTHER INFORMATION CONTACT:**

Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541-426-5501.

Dated: November 30, 1999.

**Karyn L. Wood,***Forest Supervisor.*

[FR Doc. 99-31812 Filed 12-7-99; 8:45 am]

**BILLING CODE 3410-11-M****DEPARTMENT OF COMMERCE****Submission for OMB Review; Comment Request**

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* 2000 Annual Demographic Survey—Supplement to the Current Population Survey.

*Form Number(s):* CPS-580, -580(SP), -676, -676(SP).

*Agency Approval Number:* 0607-0354.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 20,833 hours.*Number of Respondents:* 50,000.*Avg. Hours Per Response:* 25 minutes.

*Needs and Uses:* The Census Bureau conducts the Annual Demographic Survey (ADS) every year in March in conjunction with the Current Population Survey (CPS). The Census Bureau, the Bureau of Labor Statistics, and the Department of Health and

Human Services sponsor this supplement. In the ADS, we collect information on work experience, personal income and noncash benefits, household noncash benefits, health insurance coverage, participation in welfare reform benefits, race, and migration.

The work experience items in the ADS provide a unique measure of the dynamic nature of the labor force as viewed over a one-year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by persons, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. The income data from the ADS are used by social planners, economists, Government officials, and market researchers to gauge the economic well-being of the Nation as a whole, and selected population groups of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data to forecast economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use March data to determine the effects of various economic forces, such as inflation, recession, recovery, etc., and their differential effects on various population groups. Researchers evaluate March income data not only to determine poverty levels, but also to determine whether Government programs are reaching eligible households.

The March 2000 ADS contains, for the most part, the same items from last year. We have made improvements to the welfare reform questions based on cognitive testing.

*Affected Public:* Individuals or households.

*Frequency:* Annually.*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 USC, Section 182 and Title 29 USC, Sections 1-9.

*OMB Desk Officer:* Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 3, 1999.

**Linda Engelmeier,***Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 99-31769 Filed 12-7-99; 8:45 am]

**BILLING CODE 3510-07-P****DEPARTMENT OF COMMERCE****Census Bureau****Survey of Income and Program Participation (SIPP) Wave 2 of the 2000 Panel****ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 7, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3379, Washington, DC 20233-0001, (301) 457-3819.

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of 3 to 4 years. Respondents are interviewed once every four months in monthly rotations. Approximately 11,500 households are in the 2000 panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single,

unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information on taxes, the ownership and contributions made to the Individual Retirement Account, Keogh and 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 2000 Panel Wave 2 collect information about:

- Work Disability History.
- Education and Training History.
- Marital History.
- Fertility History.
- Migration History.
- Household Relationships.

Wave 2 interviews will be conducted from June 2000 through September 2000.

## II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2000 panel, respondents are interviewed a total of three times (3 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

## III. Data

*OMB Number:* 0607-0865.

*Form Number:* SIPP/CAP Automated Instrument.

*Type of Review:* Regular.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 24,150.

*Estimated Time Per Response:* 30 minutes per person.

*Estimated Total Annual Burden Hours:* 25,467.

*Estimated Total Annual Cost:* The only cost to respondents is their time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Section 182.

## IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: December 3, 1999.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 99-31768 Filed 12-7-99; 8:45 am]

**BILLING CODE 3510-07-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-405-802]

#### **Certain Cut-to-Length Carbon Steel Plate From Finland; Notice of Amended Final Results of Administrative Review in Accordance With Final Court Decision**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Amended Final Results of Administrative Review in Accordance with Final Court Decision

on Certain Cut-to-Length Carbon Steel Plate from Finland.

**SUMMARY:** On April 27, 1999, the U.S. Court of International Trade affirmed in part and reversed in part the Department of Commerce's remand determination of the final results of the antidumping duty administrative review of certain cut-to-length carbon steel plate from Finland. As there is now a final and conclusive court decision in this action, we are amending our final results.

**EFFECTIVE DATE:** December 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Charles Rast or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1324 and (202) 482-3833, respectively.

#### **SUPPLEMENTAL INFORMATION:**

##### **Background**

On April 15, 1997, the Department of Commerce (the Department) published the final results of the second administrative review in Certain Cut-to-Length Carbon Steel Plate from Finland, 62 FR 18468 (April 15, 1997) (Final Results), covering the period August 1, 1994 through July 31, 1995. In the Final Results the Department treated subject merchandise produced to different grade "A" shipbuilding specifications as non-identical merchandise. The Department also used facts available as normal value (NV) for home market sales of wide flat products or beveled plate. The Department used as facts available 32.80 percent ad valorem, the weighted-average duty rate from the original less than fair value (LTFV) investigation.

Subsequent to the publication of the Department's Final Results, both respondent Rautaruukki Oy (Rautaruukki) and petitioners appealed the Final Results to the U.S. Court of International Trade (the Court). Respondent argued that the Department should have treated all grade "A" shipbuilding steel as identical merchandise. Petitioners argued that, as facts available, the Department should have used the rate which resulted from the court challenge to the original LTFV investigation. See *Rautaruukki Oy v. United States*, Slip Op. 97-56 (CIT, May 13, 1997); *Certain Cut-to-Length Carbon Steel Plate from Finland: Amended Final Determination of Sales at Less Than Fair Value*, 62 FR 55782, 55783 (October 28, 1997).

Based on these challenges the Court remanded the Final Results. See

*Rautaruukki Oy v. United States*, Slip Op. 98-112 (CIT, August 4, 1998). On remand, the Court instructed the Department to (1) use as facts available for wide flats and beveled plate products the revised weighted-average rate of 40.36 percent from the original investigation, and (2) obtain additional grade "A" shipbuilding plate information from the respondent Rautaruukki and reconsider its decision on identical product matches.

On October 30, 1998, the Department filed its remand determination with the Court. In its determination, the Department maintained that the specifications for grade "A" shipbuilding steel in this case are not identical for model-match purposes. The Department noted that, in any event, treating grade "A" shipbuilding plate produced to different specifications as identical merchandise would not have affected the calculated dumping margin. Additionally, the Department used a partial facts available rate of 40.36 percent which resulted in a margin of 30.70 percent for the period August 1, 1994 through July 31, 1995.

On April 27, 1999, the Court sustained the Department's use of the revised partial facts available rate in recalculating a weighted-average duty rate. The Court reversed the Department's remand determination as it relates to the treatment of grade "A" merchandise. In this regard, the Court instructed Commerce to recalculate the dumping margin, treating all grade "A" steel plate as identical merchandise. See *Rautaruukki Oy v. United States*, Slip Op. 99-39 (CIT, April 27, 1999). Despite this instruction, the Court did not remand the final results to the Department, nor did the Court request that the Department inform the Court of its actions.

Pursuant to the Court's order, we have placed on the record in this case the margin calculation program in which we treated all grade "A" shipbuilding steel plate as identical merchandise. The results of the recalculation did not affect the margin calculation specified in the Department's remand determination.

#### Amendment to Final Results of Review

Because there is now a final and conclusive decision in the court proceeding, effective as of the publication date of this notice, the following final weighted-average dumping margin exists:

#### CERTAIN CUT-TO-LENGTH CARBON STEEL

Producer/Manufacturer/exporter	Weighted-average margin
Rautaruukki Oy .....	30.70

The Department will instruct the Customs Service to change the cash deposit requirements in accordance with the above rate and assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Dated: November 10, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99-31796 Filed 12-7-99; 8:45 am]

**BILLING CODE 3510-DS-P**

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

##### Location of the Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC)

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The APAC will have a closed meeting on December 16, 1999 in Detroit, Michigan to discuss U.S.-made automotive parts sales in Japanese and other Asian markets.

**DATES:** December 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, D.C. 20230, telephone: 202-482-1418.

**SUPPLEMENTARY INFORMATION:** The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Public Law 105-261). It was previously announced in the December 3, 1999 **Federal Register** Notice, that the APAC will have a closed meeting on December 16, 1999 at a location to be announced. It has been determined that the meeting will be held in Detroit, Michigan.

The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on November 29, 1999, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the December 16 meeting of the Committee and of any subcommittee thereof, dealing with privileged or

confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: December 3, 1999.

**Thomas Sobotta,**

*Acting Director, Office of Automotive Affairs.*

[FR Doc. 99-31822 Filed 12-7-99; 8:45 am]

**BILLING CODE 3510-DR-U**

#### COMMISSION OF FINE ARTS

##### Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 16 December 1999 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C., 20001-2728. Items of discussion will include designs for projects affecting the appearance of Washington, D.C., including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., 30 November 1999.

**Charles H. Atherton,**  
*Secretary.*

[FR Doc. 99-31706 Filed 12-7-99; 8:45 am]

**BILLING CODE 6330-01-M**

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

##### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 2, 1999.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** December 9, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67046, published on December 4, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 2, 1999.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 9, 1999, you are directed to increase the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit <sup>1</sup>
Sublevels in Group I	
239 .....	3,324,737 kilograms.
315 .....	137,772,168 square meters.
345 .....	139,355 dozen.
443 .....	137,568 numbers.
670-L <sup>2</sup> .....	17,442,819 kilograms.
Group II	
330, 332, 349, 353, 354, 359-O <sup>3</sup> , 431, 432, 439, 459, 630, 632, 653, 654 and 659-O <sup>4</sup> , as a group.	133,538,656 square meters equivalent.
Level not in a Group	
870 .....	35,926,418 kilograms.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1998.

<sup>2</sup> Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

<sup>3</sup> Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359-C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359-V).

<sup>4</sup> Category 659-O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99-31767 Filed 12-7-99; 8:45 am]

**BILLING CODE 3510-DR-F**

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**Increase of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic**

December 2, 1999.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

**EFFECTIVE DATE:** December 9, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current Guaranteed Access Levels for textile products in Categories 338/638 and 347/348/647/648.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 2, 1999.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and



man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 9, 1999, you are directed to increase the Guaranteed Access Levels for the categories listed below for the period beginning on January 1, 1999 and extending through December 31, 1999.

Category	Guaranteed access level
338/638 .....	7,650,000 dozen.
347/348/647/648 .....	9,550,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99-31764 Filed 12-7-99; 8:45 am]

**BILLING CODE 3510-DR-F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

December 2, 1999.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** December 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 340/640 and 347/348 are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60306, published on November 9, 1998.

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

December 2, 1999.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999.

Effective on December 8, 1999, you are directed to increase the limits for the following categories, as provided for under the current bilateral textile agreement between the Governments of the United States and the Sultanate of Oman:

Category	Adjusted twelve-month limit <sup>1</sup>
340/640 .....	302,439 dozen.
347/348 .....	1,122,742 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99-31766 Filed 12-7-99; 8:45 am]

**BILLING CODE 3510-DR-F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

December 2, 1999.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and undoing of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 53880, published on October 7, 1998.

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

December 2, 1999.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit <sup>1</sup>
331/631 .....	3,873,577 dozen pairs.
341/641 .....	2,300,826 dozen of which not more than 1,667,069 dozen shall be in Category 341 and not more than 1,667,069 dozen shall be in Category 641.
369-D <sup>2</sup> .....	288,699 kilograms.
611 .....	5,220,837 square meters.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1998.

<sup>2</sup> Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99-31765 Filed 12-7-99; 8:45 am]

**BILLING CODE 3510-DR-F**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board Task Force on DoD Frequency Spectrum Issues

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Notice of closed advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on DoD Frequency Spectrum Issues will meet in closed session on December 10, 1999, January 20-21, February 24-25, March 29-30, April 20-21, May 24-25, 2000 at SAIC, 4001 N. Fairfax Drive, Arlington, Virginia (except for the 10 December meeting which will be held at the Joint Spectrum Center, Annapolis, MD).

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition, Technology and Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, noted above, the Task Force will examine the competing interest in, and access to, the RF frequency spectrum and its impact on military readiness and national security in the 21st century. This study will review and evaluate DoD user frequency spectrum requirements and related

advances in technology to improve utilization of this finite resource.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that accordingly these meetings will be closed to the public.

Dated: December 2, 1999.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 99-31758 Filed 12-7-99; 8:45 am]

**BILLING CODE 5001-10-M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Intent To Grant Exclusive License; PyroGenesis Inc.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to PyroGenesis Inc. a revocable, nonassignable, exclusive license to practice the government-owned inventions described in U.S. Patent Number 5,960,026 entitled, "*Organic Waste Disposal System*."

**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 7, 2000.

**ADDRESS:** Written objections are to be filed with the Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Blvd., West Bethesda, MD 20817-5700.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dick Bloomquist, Director Technology Transfer, Carderock Division, Naval Surface Warfare Center, Code 0117, 9500 MacArthur Blvd., West Bethesda, MD 20817-5700, telephone (301) 227-4299.

Dated: November 24, 1999.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 99-31705 Filed 12-7-99; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Supplemental Announcement Number 04, Production of Ethanol from Biomass, to the Broad Based Solicitation (DE-PS36-00GO10482) for Submission of Financial Assistance Applications Involving Research, Development and Demonstration

**AGENCY:** The Department of Energy (DOE).

**ACTION:** Request for applications for research and development projects in support of the DOE Biomass Program.

**SUMMARY:** The DOE Office of Fuels Development is funding a competitive financial assistance program in support of the DOE Biomass Program. Proposals are requested under a DOE Broad Based Solicitation that is anticipated to result in the award of several cooperative agreements in Fiscal Year 2000.

**SUPPLEMENTARY INFORMATION:** The Office of Fuels Development of the DOE Office of Energy Efficiency and Renewable Energy (EERE) is supporting the issuance of this Supplemental Announcement to the EERE Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE-PS36-00GO10482. The Broad Based Solicitation contains information that must be used in conjunction with this Supplemental Announcement when applying for an award. Thus, in order to prepare a complete application, it is mandatory to comply with the requirements of the overall Broad Based Solicitation document, DE-PS36-00GO10482 (found on the Golden Field Office Home Page at <http://www.eren.doe.gov/golden/solicitations.html>) as well as the requirements of this Supplemental Announcement 04 document.

Under this Supplemental Announcement, DOE is seeking research and development (R&D) proposals that will increase the efficiency or lower the cost of producing and converting biomass to transportation fuels. The objective of this solicitation is to support new approaches to improve technology for the efficient, cost effective production of ethanol. There are three specific areas of interest for this solicitation. Biomass feedstock collection and storage, which includes research and development related to improving the harvest, harvest equipment, handling, transportation and storage of biomass for conversion to fuels and chemicals. Conversation

technologies, which includes biological processing of biomass to ethanol. Pretreatment fundamentals, which includes research techniques and analytical tools that could lead to a better understanding of fundamental processes of pretreatment.

This solicitation is for Financial Assistance Applications, and the Statement of Work (SOW) and budget information requested under this Supplemental Announcement should address a period of up to 12 months. Awards, if any, will result from a merit review process applied to the applications.

**DATES:** Applications should be submitted as described in the Supplemental Announcement by January 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401. The Project Engineer is Andrew Trenka, at (303) 275-4745 or e-mail at [andy\\_trenka@nrel.gov](mailto:andy_trenka@nrel.gov). The Contract Specialist is James McDermott, at FAX: (303) 275-4788 or e-mail at [jim\\_mcdermott@nrel.gov](mailto:jim_mcdermott@nrel.gov). The Supplemental Announcement can be obtained from the GFO website at [www.eren.doe.gov/golden/solicitations.html](http://www.eren.doe.gov/golden/solicitations.html) as of December 15, 1999. If unable to access the internet, you may obtain a copy of the Solicitation by calling Amy Castelli at (303) 275-4716, FAX (303) 275-4788.

Issued in Golden, Colorado, on November 30, 1999.

**Matthew A. Barron,**

*Contracting Officer, Golden Field Office.*

[FR Doc. 99-31792 Filed 12-7-99; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-446-003]

#### CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1999.

Take notice that on November 24, 1999, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of December 25, 1999:

First Revised Sheet No. 397

CNG states that the purpose of this filing is to modify CNG's FERC Gas Tariff to specific that CNG can offer a

discount to a shipper making a reserve commitment without having to file individual discounted service agreements. CNG further states that its proposed language is consistent with the findings of the Commission's order issued November 16, 1999, in this proceeding, 89 FERC ¶61,188 (1999).

CNG states that copies of its letter of transmittal and enclosures are being served upon its customers and to interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99-31736 Filed 12-7-99; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-33-000]

#### Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

December 2, 1999.

Take notice that on November 24, 1999, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030-1046, filed in Docket No. CP00-33-000, a request pursuant to Sections 57.205 and 157.208 (18 CFR Sections 157.205 and 157.208) of the Commission's Regulations under the Natural Gas Act, and Columbia's authorization in Docket No. CP83-76-000, 22 FERC Paragraph 62,029 (1983) to increase the maximum allowable operating pressure (MAOP) of seven existing pipelines located in the Appalachian Production Area of West Virginia and Kentucky.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the

Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99-31730 Filed 12-7-99; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP91-143-049]

#### Great Lakes Gas Transmission Limited; Notice of Revenue Sharing Report—November 1998–October 1999

December 2, 1999.

Take notice that on November 24, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Commission in accordance with the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Docket No. RP91-143-000, et al.

Great Lakes states that this report reflects application of the avenue sharing mechanism and revenue sharing amounts determined for remittance to eligible firm shippers for I/O revenue collected for the November 1, 1998 through October 31, 1999 period, in accordance with Article IV of the Settlement. Great Lakes states that I/O revenue collected for the applicable period did not exceed the threshold level of fixed costs allocated to I/O services. Therefore, revenue subject to sharing are zero. Great Lakes further states that as revenue subject to sharing was zero, it did not make any remittances to eligible firm shippers for I/O Revenue Sharing for the November 1, 1998 through October 31, 1999 period.

Great Lakes states that copies of the report were sent to its firm customers, parties to this proceeding and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with section 285.211 of the Commission's rules and regulations. All such protests must be filed on or before December 8, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99-31734 Filed 12-7-99; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-84-000]

#### Kansas Pipeline Company; Notice of Revenue Refund Report

December 2, 1999.

Take notice that on November 29, 1999, Kansas Pipeline Company (KPC) tendered for filing an Excess Interruptible Revenue Refund Report.

KPC states that the report is made pursuant to Section 24.5 of its FERC Gas Tariff. KPC requests a waiver from the crediting provision of Section 24.5 in order to make a lump-sum payment to the one shipper eligible for the refund.

KPC states that copies of the filing have been served on all parties to the proceeding in Docket No. CP96-152.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 9, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the

web at <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99-31739 Filed 12-7-99; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-320-027]

#### Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

December 2, 1999.

Take notice that on November 24, 1999, Koch Gateway Pipeline Company (Koch) filed with the Commission a contract for disclosure of recently negotiated rate transaction. As shown on the contract, Koch requests an effective date of December 1, 1999.

Special Negotiated Rate Between Koch and Koch Energy Trading

Koch states that it has served copies of this filing upon each all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99-31735 Filed 12-7-99; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-83-000]

#### Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1999.

Take notice that on November 29, 1999, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing.

Texas Gas states that the purpose of this filing is to establish a new summer no-notice service (SNS) designed primarily to meet the unique requirements of the developing summer electric power generation market, although eligibility for service under this SNS Rate Schedule is not restricted to power generators. The filing proposes new tariff sheets establishing the new Rate Schedule SNS and a pro forma SNS Service Agreement, as well as minor conforming changes to the existing General Terms and Conditions to incorporate the new rate schedule.

Texas Gas states that copies of this filing have been served upon Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99-31738 Filed 12-7-99; 8:45 am]

**BILLING CODE 6717-01-M**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP00-31-000]

**Washington Gas Light Company and Shenandoah Gas Company; Notice of Application**

November 29, 1999.

Take notice that on November 19, 1999, Washington Gas Light Company (Washington), 1100 H Street, NW, Washington, D.C. 20080, and Shenandoah Gas Company (Shenandoah), P.O. Box 2400 Winchester, Virginia, 22604, a wholly owned subsidiary of Washington, filed an application in Docket No. CP00-31-000, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA), for an order (i) approving the abandonment by Shenandoah, and the acquisition by Washington, of Shenandoah's certificated facilities in Virginia, through the merger of Shenandoah with and into Washington, or alternatively, finding that such abandonment is not necessary because Shenandoah's NGA Section 7(c) certificates were effectively terminated and subsumed within Shenandoah's subsequent NGA Section 7(f) service area determination, (ii) amending Washington's service area determination under NGA Section 7(f) to include the territory served by Shenandoah in Virginia, and (iii) merging Shenandoah's blanket certificate issued under 18 CFR 284.224 with Washington's blanket certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Any questions regarding the application should be directed to Donald R. Hayes, Specialist, Senior—Legal, Washington Gas Light Company, 1100 H Street, NW., Washington, DC 20080 or call (202) 624-6504.

Washington and Shenandoah state that Commission authorization of the transactions described in the application is in the public convenience and necessity because Washington will provide, through its Shenandoah Division, continued retail gas service to all of Shenandoah's former customers in Virginia and firm interstate transportation service on behalf of Mountaineer Gas Company and other customers in West Virginia at the same rates and under the same terms and conditions of service as currently provided by Shenandoah.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 20, 1999, file with the Federal Energy Regulatory Commission, Washington, DC, 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Shenandoah and/or Washington to appear or to be represented at the hearing.

**David P. Boergers,***Secretary.*

[FR Doc. 99-31729 Filed 12-7-99; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Florida Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Compressor Station 11A Expansion Project and Request for Comments on Environmental Issues**

[Docket No. CP00-4-000]

December 2, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an

environmental assessment (EA) that will discuss the environmental impacts of the Compressor Station 11A Expansion Project involving construction and operation of facilities by Florida Gas Transmission Company (FGT) in Mobile County, Alabama.<sup>1</sup> This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

**Summary of the Proposed Project**

FGT wants to expand the capacity of its facilities in Alabama to transport an additional 80,000 million British thermal units per day of natural gas to Alabama Electric Cooperative, Inc. (AEC) for use at a nonjurisdictional electric generating facility in Escambia County, Alabama. To provide this service FGT seeks authority to:

- Upgrade the two compressor turbines at Compressor Station 11A (CS-11A) from 12,600 horsepower (hp) Solar T-90s to 15,000 hp Solar T-100s for a new total station horsepower of 30,000 hp;
- Rewheel the centrifugal compressor of each unit to enable the compression of a larger volume of gas at a lower differential pressure;
- Install one new gas scrubber and a cooler; and
- Loop the existing 30-inch-diameter suction yard pipeline with approximately 1,000 feet of 36-inch-diameter pipeline.

All of the proposed facilities would be constructed in the station yard of CS-11A. The location of the project facilities is shown in appendix 2.<sup>2</sup>

**Land Requirements for Construction**

Construction activities would require approximately 6 acres of previously disturbed soil located entirely within the 27 acre, fenced compressor station property. The entire 6 acres would return to pre-construction conditions as no additional land would be needed to operate the new facilities.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental

<sup>1</sup> FGT's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

<sup>2</sup> The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208-1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Land Use.
- Cultural resources.
- Air quality and noise, endangered and threatened species.
- Public safety.
- Hazardous waste.

We will also evaluate and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on the following page.

#### **Currently Identified Environmental Issues**

We have already identified the air and noise impacts associated with upgrading the two compressor units at CS-11A as an issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by FGT. Additional issues may be included

based on your comments and our analysis.

#### **Nonjurisdictional Facilities**

Also, we have made a preliminary decision to not address the impacts for the power generating plant and approximately 60 miles of new 20-inch-diameter pipeline. These are nonjurisdictional facilities to be constructed by AEC for the delivery of natural gas from the existing FGT mainlines to a planned power generating plant. We will briefly describe their location and status in the EA.

#### **Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR-11.2.
- Reference Docket No. CP00-4-000.
- Mail your comments so that they will be received in Washington, DC on or before January 3, 2000.

#### **Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenor play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only

intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208-1088 or on the FERC website ([www.ferc.fed.us](http://www.ferc.fed.us)) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208-2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal document issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208-2474.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99-31731 Filed 12-7-99; 8:45 am]

**BILLING CODE 6717-01-M**

## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

#### **Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions**

December 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* New Major License
- b. *Project No.:* 2661-012
- c. *Date filed:* September 24, 1998
- d. *Applicant:* Pacific Gas and Electric Company
- e. *Name of Project:* Hat Creek Hydroelectric Project
- f. *Location:* On Hat Creek in Shasta County, California. About 6.57 acres of the project occupy lands of the U.S. Forest Service, Shasta National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r).

h. *Applicant Contact:* Mr. Michael A. Katz, Lead Manager, Power Generation, Pacific Gas and Electric Company, Mail Code: N11C, P.O. Box 770000, San Francisco, CA., 94177, (415) 973-4603.

i. *FERC Contact:* David Turner, David.Turner@FERC.FED.US, (202) 219-2844

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The run-of-river project consists of two developments, Hat Creek No. 1 and Hat Creek No. 2, which consists of the following existing facilities:

Hat Creek No. 1: (1) a 12-foot-high, 231-foot-long concrete buttress overflow diversion dam impounding a 13-acre reservoir at a water surface elevation of 3,188 feet (referred to as Cassel Pond); (2) a 2,270-foot-long, 9-foot-deep, 30-foot-wide canal with a hydraulic capacity of about 600 cfs; (3) a 14-foot-high, 750-foot-long shotcreted earthfill forebay with an overflow spillway, having a surface area of about 2 acres; (4) a 1,600-foot-long, riveted steel penstock; (5) a 43 foot by 56.5 foot reinforced concrete powerhouse containing a Francis/Vertical shaft turbine with a generating capacity of 10,000 kilowatt (kW).

Hat Creek No. 2: (1) Crystal Lake, a natural lake with a surface area of 115 acres at a water surface elevation of 2,980 feet; (2) a 29-foot-high, 120-foot-long concrete gravity overflow diversion dam impounding an 89-acre reservoir at a water surface elevation of 2,975 feet (referred to as Baum Lake); (3) a 4,520 foot-long, 7-foot-deep, 18-foot-wide reinforced concrete flume, with a hydraulic capacity of 600 cfs; (4) a 414-foot-long riveted steel penstock; and (5) a 43 foot by 56.5 foot reinforced concrete powerhouse containing a

Francis/Vertical shaft turbine with a generating capacity of 10,000 kW.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208-1371. The application may be viewed on <http://www.ferc.fed.us/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

**Filing and Service of Responsive Documents**—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory

Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99-31732 Filed 12-7-99; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application for Amendment of License and Applicant Prepared Environmental Assessment Accepted for Filing; Requesting Interventions and Protests; Requesting Comments, Final Terms and Conditions; Requesting Reply Comments

December 2, 1999.

Take notice that the following hydroelectric application and Applicant Prepared Environmental Assessment (APEA) has been filed with the Commission and is available for public inspection.

a. *Application Type:* Application to Amend License for the Sturgeon Falls Project.

b. *Project No:* 2720-032.

c. *Date Filed:* October 4, 1999.

d. *Applicant:* City of Norway, Michigan.

e. *Name of Project:* Sturgeon Falls Project.

f. *Location:* This project is located on the Menominee River in Dickinson County, Michigan and Marinette County, Wisconsin. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mark Isackson, City Manager, City of Norway, 915 Main Street, P.O. Box 99, Norway, MI 49870, (906) 563-80115.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 219-3273 or by e-mail at [vedula.sarma@ferc.fed.us](mailto:vedula.sarma@ferc.fed.us).

j. *Deadline for filing motions to intervene, protests, comments, final terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the docket number (P-2720-032) on any comments or motions filed.



*k. Description of Filing:* The City of Norway proposes to change the project's present run-of-river mode of operation to a reregulating project to regulate the peaking flows released from Wisconsin electric's hydroelectric projects located upstream of the Sturgeon Falls project. The City of Norway proposes to raise the existing steel slide gates to raise the operating head from elevation 101.9 feet (Plant Datum or 830.1 feet National Geodetic Vertical Datum (NGVD)) to 102.8 feet (Plant Datum or 831.0 NGVD) and modify operations to release a continuous discharge that approximates the mean daily discharge from upstream hydropower projects, including the inflows from the Sturgeon River.

Reregulation of flows at the Sturgeon Falls Project is an integral component of the Wilderness Shores Settlement Agreement, which concerns the following Wisconsin Electric's (WE) relicensing applications pending before the Commission: Way Dam (P-1759), Hemlock Falls (P-2074), Lower Paint (P-2072), Peavy Falls (P-1759), Michigamme Falls (P-2073), Twin Falls (P-1759), Kingsford (P-2131), Big Quinesec Falls (P-1980), and surrender of license and removal of Sturgeon Project dam (P-2471). Therefore, this amendment request by the City of Norway will be coordinated with these other actions.

*Status of Environmental Analysis:* On March 25, 1996, the Director, Office of Hydropower Licensing approved WE's use of the Alternative Licensing Process. Scoping, pursuant to the National Environmental Policy Act of 1969, as amended, for the project was conducted through scoping documents issued in July 1996 and January 1997, and in public scoping meetings on September 16 and 17, 1996. The draft amendment application and APEA were distributed by the applicant for comment on October 20, 1998.

The Commission staff has reviewed the amendment application and APEA and has determined that the application is acceptable for processing and no additional information or studies are needed to prepare the Commission's environmental assessment. Comments, as indicated above, are being requested from interested parties. The applicant must respond to those comments within 105 days from the date of this notice or may elect to seek a waiver of this deadline.

*l. Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing may be

viewed on <http://www.ferc.fed.us/online/rims.htm> [call (202) 208-2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

*m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

*Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99-31733 Filed 12-7-99; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-21-000]

### CNG Transmission Corporation; Notice of Technical Conference

December 2, 1999.

In the Commission's order issued on November 10, 1999,<sup>1</sup> the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, December 14, 1999, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99-31737 Filed 12-7-99; 8:45 am]

**BILLING CODE 6717-01-M**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-34213; FRL-6399-2]

### Organophosphate Pesticides; Availability of Revised Risk Assessments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of the revised risk assessments and related documents for two organophosphate pesticides, methidathion and oxydemeton methyl. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

**DATES:** Comments, identified by docket control numbers OPP-34172B for methidathion and OPP-34167B for oxydemeton methyl, must be received by EPA on or before February 7, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as

<sup>1</sup> 89 FERC ¶61,158.



provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control numbers OPP-34172B for methidathion and OPP-34167B for oxydemeton methyl in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:**

Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308-8004; e-mail address: angulo.karen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Does this Action Apply to Me?**

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on methidathion and oxydemeton methyl, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

**II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?**

*A. Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at <http://www.epa.gov/pesticides/op/>.

*B. In Person.* The Agency has established an official record for this action under docket control numbers OPP-34172B for methidathion and OPP-34167B for oxydemeton methyl. The official record consists of the

documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

**III. How Can I Respond to this Action?**

*A. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control numbers OPP-34172B for methidathion and OPP-34167B for oxydemeton methyl in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket

control numbers OPP-34172B for methidathion and OPP-34167B for oxydemeton methyl. Electronic comments may also be filed online at many Federal Depository Libraries.

*B. How Should I Handle CBI Information that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

**IV. What Action is EPA Taking in this Notice?**

EPA is making available for public viewing the revised risk assessments and related documents for two organophosphates, methidathion and oxydemeton methyl. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The

documents being released to the public through this notice provide information on the revisions that were made to the methidathion and oxydemeton methyl preliminary risk assessments, which were released to the public on January 15, 1999 (64 FR 2644) (FRL-6056-9) for methidathion, and January 8, 1999 (64 FR 1199) (FRL-6055-9) for oxydemeton methyl, through notices in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for methidathion and oxydemeton methyl. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the pesticides specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific methidathion and oxydemeton methyl use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, for example, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before February 7, 2000 at the addresses given under the "ADDRESSES" section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

#### List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 2, 1999.

**Lois A. Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 99-31773 Filed 12-7-99; 8:45 am]

**BILLING CODE 6560-50-F**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-50864; FRL-6398-3]

### Plant-Pesticide Corn Rootworm Experimental Use Permits; Receipt of Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications 524-EUP-ON, 524-EUP-OE, and 524-EUP-OG from Monsanto Company, 700 Chesterfield Parkway North, St. Louis, Missouri 63198, requesting experimental use permits (EUPs) for the *Bacillus thuringiensis* Cry3Bb protein and the genetic material necessary for its production (Vector ZMIR14L) in corn, the *Bacillus thuringiensis* Cry3Bb protein and the genetic material necessary for its production (Vector ZMIR12L) in corn, and the *Bacillus thuringiensis* Cry3Bb protein and the genetic material necessary for its production (Vector ZMIR13L) in corn. The Agency has determined that these applications may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on these applications.

**DATES:** Comments, identified by docket control number OPP-50864, must be received on or before January 7, 2000.

**ADDRESSES:** Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-50864 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308-8715; and e-mail address:

mendelsohn.mike@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of plant-pesticides under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

### B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-50864. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

### C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To

ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-50864 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-50864. Electronic comments may also be filed online at many Federal Depository Libraries.

#### *D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

#### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

#### **II. Proposed Experimental Programs**

The subject programs propose to test and evaluate genetically modified corn that has been developed to provide control of corn rootworm (*Diabrotica spp.*). Monsanto Company proposes to plant 186 acres in Hawaii and Puerto Rico in 1999 of each plant-pesticide and 1,237 acres in Alabama, California, Colorado, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin in 2000 of each plant-pesticide. All plantings of corn containing the *Bacillus thuringiensis* Cry3Bb protein under these experimental programs will be contained during these experimental programs. No portion of the crops will be used for food or feed.

#### **III. What Action is the Agency Taking?**

Following the review of the Monsanto Company application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP requests for these EUP programs, and if issued, the conditions under which it is to be conducted. Any issuance of EUPs will be announced in the **Federal Register**.

#### **List of Subjects**

Environmental protection,  
Experimental use permits.

Dated: December 1, 1999.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 99-31772 Filed 12-7-99; 8:45 am]

**BILLING CODE 6560-50-F**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested**

November 26, 1999.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) The accuracy of the Commission's burden estimate; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before February 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A-804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the

information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0310.

*Title:* Registration Statement Required, 47 CFR 76.12.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit entities.

*Number of Respondents:* 600.

*Estimated Time Per Response:* .25 hours.

*Frequency of Response:* Other reporting requirements.

*Total Annual Burden:* 150 hours.

*Total Annual Costs:* \$28,200.

*Needs and Uses:* 47 CFR 76.12

requires that a registration statement be filed with the Commission before a system community unit shall be authorized to commence operation. A system community unit is a cable television system, or portion of a cable television system, that operates within a separate and distinct community or municipal entity. The data will be used by Commission staff to maintain complete records regarding cable systems and to ensure compliance with our rules.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99-31753 Filed 12-7-99; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 99-2713]

### Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On December 3, 1999, the Commission released a public notice announcing the December 22, conference call meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda. This notice of the December 22, 1999 NANC conference call meeting is being published in the **Federal Register** less than 15 calendar days prior to the meeting due to NANC's need to discuss a time sensitive issue before the next scheduled meeting. This statement complies with the General Services Administration Management regulations

implementing the Federal Advisory Committee Act. See 41 CFR section 101-6.1015(b)(2).

**FOR FURTHER INFORMATION CONTACT:**

Jeannie Grimes at (202) 418-2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418-2345. The TTY number is: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** Released: December 7, 1999.

The North American Numbering Council (NANC) has scheduled a meeting to be held by conference call on Wednesday, December 22, 1999, from 2 p.m. until 3 p.m. EST. The conference bridge number is 1-888-422-7105; the access code is 510432. Due to limited port space, NANC members and Commission staff will have first priority on the call. Members of the public may join the call as remaining port space permits.

This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. Participation on the conference call is limited. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

### Proposed Agenda

1. Final review and approval of the revised North American Numbering Council (NANC) North American Numbering Plan (NANP) Thousand Block Pool Administrator Requirements Document. The finalized document will be forwarded to the Chief, Common Carrier Bureau on or before December 30, 1999.

2. Other Business.

Federal Communications Commission.

**Diane Griffin Harmon,**

*Assistant Chief, Network Services Division, Common Carrier Bureau.*

[FR Doc. 99-31905 Filed 12-7-99; 8:45 am]

**BILLING CODE 6712-01-U**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:00 Noon on Friday, December 3, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's Supervisory and resolution activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c) (6), (c) (8), (c) (9) (A) (ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c) (6), (c) (8), (c) (9) (A) (ii), and (c) (9) (B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: December 3, 1999.

Federal Deposit Insurance Corporation.

**James D. LaPierre**

*Deputy Executive Secretary.*

[FR Doc. 99-31885 Filed 12-6-99; 10:31 am]

**BILLING CODE 6714-01-M**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### Labor-Management Cooperation Program; Application Solicitation

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Request for public comment on draft Fiscal Year 2000 Program Guidelines/Application Solicitation for Labor-Management Committees.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 2000 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public. The program is supported by Federal funds authorized by the Labor-

Management Cooperation Act of 1978, subject to annual appropriations.

**DATES:** Comments must be submitted on or before January 7, 2000.

**ADDRESSES:** Send Comments to: Peter Regner, Director, Program Services, Labor Management Grants Program, FMCS 2100 K Street, NW, Washington, DC 20427.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Regner, 202-606-8181.

**Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY 2000**

**A. Introduction**

The following is the draft solicitation for the Fiscal Year (FY) 2000 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness, enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

**B. Program Description**

*Objectives*

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

- (1) To improve communication between representatives of labor and management;
- (2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;
- (3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process.
- (4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;
- (5) To enhance the involvement of workers in making decisions that affect their working lives;
- (6) To expand and improve working relationships between workers and managers; and
- (7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objective that meet the forementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels. A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed by multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of

higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area of industry committee, consideration should be given to the above definitions as well as to the focus on the committee.

In FY 2000, competition will be open to company/plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

*Required Program Elements*

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *Why* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *What* the labor-management committee as a demonstration effort will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in *specific* and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing

committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies *How* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for when they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using September 18, 2000, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment

will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

#### *Selection Criteria*

The following criteria will be used in the scoring and selection of applications for award:

(2) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value of the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

#### **C. Eligibility**

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to grantees who seek funds on behalf of an entirely different committee.

#### D. Allocations

The total FY 2000 appropriation for this program is \$1.5 million, of which at least \$1,000,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E.

FMCS reserves the right to retain up to five percent of the FY2000 appropriation to contract for program support purposes (such as evaluation) other than administration.

#### E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If all of the original funding is not obligated within 12 months, FMCS will consider grant period extensions for up to an additional six months. No continuation awards are anticipated. Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within 18 months, these grants may be extended for up to six months. No continuation awards are anticipated.

The dollar range of awards is as follows:

- Up to \$45,000 in FMCS funds per annum for existing company/plant or single department public sector applicants;
- Up to \$65,000 over 18 months for new company/plant committee or single department public sector applicants;

- Up to \$100,000 in FMCS funds per annum for existing area, industry and multi-departmental public sector committee applicants;
- Up to \$125,000 per 18-month period for new area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

#### F. Cash Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at committee meetings or time spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of existing full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2000 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

#### G. Application Submission and Review Process

Applications should be signed by *both* a labor and management representative and be postmarked no later than May 20, 2000. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus three copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW, Washington, D.C. 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Grant Review Boards. The Board(s) will recommend selected applications for further funding consideration. The Director, Program Services, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY2000 grant applicants will be notified of results and all grant awards will be made before September 15, 2000. Applications submitted after the May 20 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Program Services.

#### H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW, Washington, D.C. 20427; or by calling 202-606-8181. The Application Solicitation can also be found on the FMCS web site at [www.fmcs.gov](http://www.fmcs.gov).

#### C. Richard Barnes,

*Director, Federal Mediation and Conciliation Service.*

[FR Doc. 99-31701 Filed 12-7-99; 8:45 am]

BILLING CODE 6732-01-M



**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 2000.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *ASB Management Corp.*, Anna, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Anna State Bank, Anna, Illinois.

**B. Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *First State Bank of Rushmore KSOP Plan and Trust*, Worthington, Minnesota; to acquire an additional 5.71 percent for a resulting ownership of 35.71 percent of First Rushmore Bancorporation, Inc., Worthington, Minnesota, and thereby indirectly acquire First State Bank of Pipestone Rushmore and Worthington, Pipestone, Minnesota.

Board of Governors of the Federal Reserve System, December 2, 1999.

**Robert deV. Frierson,**  
*Associate Secretary of the Board.*

[FR Doc. 99-31725 Filed 12-7-99; 8:45 am]

**BILLING CODE 6210-01-F**

**FEDERAL RESERVE SYSTEM****Government in the Sunshine Meeting Notice**

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:00 a.m., Monday, December 13, 1999.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202-452-3204.

**SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 3, 1999.

**Robert deV. Frierson,**  
*Associate Secretary of the Board.*

[FR Doc. 99-31870 Filed 12-3-99; 5:03 pm]

**BILLING CODE 6210-01-P**

**FEDERAL TRADE COMMISSION**

**[File Nos. 992 3082; 992 3078; 992 3081; 992 3080; 992 3116; and 992 3079]**

**Dunphy Nissan, Inc., et al.; Marty Sussman Organization, Inc., et al.; Norristown Automobile Co., Inc., et al.; Northeast Auto Outlet, Inc., et al.; Pacifico Ardmore, Inc., et al.; and Pacifico Ford, Inc., et al.; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreements.

**SUMMARY:** The consent agreements in these six matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

**DATES:** Comments must be received on or before January 31, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Sally Pitofsky, FTC/S-4429, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326-3318.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. Electronic copies of the full text of the consent agreement packages can be obtained from the FTC Home Page (for December 2, 1999), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." Paper copies can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Orders To Aid Public Comment**

*Summary:* The Federal Trade Commission has accepted separate



agreements, subject to final approval, from respondents Dunphy Nissan, Inc. and Serge Naumovsky ("Dunphy"); Norristown Automobile Co., Inc. and William Milliken ("Norristown"); Northeast Auto Outlet, Inc. and Arthur Micchelli ("Northeast"); Pacifico Ardmore, Inc. and Kerry J. Pacifico ("Pacifico Ardmore"); Pacifico Ford, Inc. and Kerry T. Pacifico ("Pacifico Ford"); and Marty Sussman Organization, Inc. and Martin E. Sussman ("Sussman") (together "respondents"). The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreement or make final the agreements' proposed orders.

## I. Complaint Allegations

### A. FTC Act Violations

The complaints against the respondents allege that their automobile lease advertisements violate the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and Regulation M. The complaints also allege that respondents' credit advertisements have violated the Truth in Lending Act ("TILA") and Regulation Z. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of materials information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board ("Board") to promulgate regulations implementing such statutes—Regulations M and Z respectively. See 15 U.S.C. 1601–1667e; 12 CFR part 213; 12 CFR part 226.

The complaints against respondents allege that their lease advertisements represent that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and the downpayment amount. These lease advertisements, according to the complaints, have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total

amount due at lease inception. The complaints allege that this information does not appear at all or appears in fine print in the advertisements and that the information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

The complaints against Dunphy and Northeast also allege that these respondents misrepresent that consumers can purchase the advertised vehicles for the monthly payment amounts prominently stated in the advertisements. According to the complaints, the monthly payment amounts prominently stated in the advertisements are components of lease offers and not credit offers. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

The complaint against Dunphy further alleges that Dunphy misrepresents that the amount stated as "down" or "downpayment" is the total amount consumers must pay at lease inception to lease the advertised vehicles. According to the complaint, however, consumers are required to pay additional fees beyond the amount stated as "down" or "downpayment," including but not limited to the first month's payment, a security deposit, and/or a bank fee. This practice, according to the complaint, constitutes a deceptive practice in violation of Section 5(a) of the FTC Act.

The complaint against Northeast also alleges that Northeast misrepresents that the offer to double consumers' downpayments up to \$4,000 applied to the lease or credit offers advertised. According to the complaint, the offer to double consumers' downpayments up to \$4,000 was not available with the advertised lease or credit offers. This practice, according to the complaint, constitutes a deceptive practice in violation of Section 5(a) of the FTC Act.

The complaints against Dunphy, Northeast, Norristown, and Pacifico Ardmore allege that their credit advertisements represent that consumers can purchase the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the sales price and/or downpayment amount. According to the complaints, these credit advertisements fail to disclose additional terms pertaining to the credit offer, such as the terms of repayment and the annual percentage rate. Such information is alleged to be material to

consumers in deciding whether to visit respondents' dealerships and/or whether to purchase an automobile from respondents. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

### B. CLA and Regulation M Violations

The complaints allege that all respondents violated the CLA and Regulation M. The complaints allege that respondents' lease ads state a monthly payment amount and/or downpayment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, one or more of the following required terms: that the transaction advertised is a lease; the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation and that such amount: (1) excludes third-party fees that vary by state or locality, such as taxes, licenses, and registration fees, and discloses that fact or (2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and that an extra charge may be imposed at the end of the lease term where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

According to the complaints, the lease disclosures in respondents' lease advertisements are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location. These practices, according to the complaints, violate the advertising requirements of the CLA and Regulation M.

The complaints also allege that respondents' lease advertisements state a downpayment amount more prominently than the disclosure of the total amount due at lease signing. According to the complaints, these practices violate Regulation M.

### C. TILA and Regulation Z Violations

The complaints against Dunphy, Norristown, Northeast, Pacifico Ardmore, and Pacifico Ford allege that these respondents violated the TILA and Regulation Z. According to the complaints, these respondents state a monthly amount and/or a downpayment amount as terms for financing the purchase of the advertised vehicles, but fail to disclose the following items of information required by Regulation Z: the annual percentage rate and the terms

of repayment. In addition, the complaints against all respondents allege that their credit ads do not properly state the finance charge as the annual percentage rate, as required by Regulation Z.

## II. Proposed Orders

The proposed orders prohibit respondents from disseminating advertisements that state the amount of any payment due at inception (excluding the monthly payment amount) or the fact that any or no inception payment is due without also disclosing with "equal prominence" the total amount a consumer must pay at lease signing or delivery. This requirement parallels an identical requirement found in Regulation M.

The proposed orders also prohibit respondents from disseminating advertisements that state the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows: that the transaction advertised is a lease; the total amount due at lease signing or delivery; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle. This requirement is intended to enjoin the respondents from deceptively advertising only the most attractive portions of its lease offers by requiring clear and conspicuous disclosure of the information necessary for consumers to make informed decisions about advertised lease offers. This paragraph parallels the advertising disclosure requirements from the CLA and Regulation M. The proposed orders also prohibit respondents from violating the CLA and Regulation M.

In addition, the proposed order for Dunphy prohibits Dunphy from misrepresenting the costs of leasing, including the total due at lease inception. The proposed orders for respondents Dunphy and Northeast prohibit these respondents from misrepresenting that advertised terms apply to a cash or credit offer, when, in fact, the terms apply to an offer to lease the advertised vehicle. The proposed order for Northeast also prohibits Northeast from misrepresenting the availability of any advertised offer.

With respect to credit advertisements, the proposed orders prohibit respondents from stating the amount or

percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment; and the correct annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

The proposed orders also prohibit respondents from stating a rate of finance charge without stating the rate as an "annual percentage rate" or "APR." The proposed orders also prohibit all respondents from violating the TILA or Regulation Z.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 99-31795 Filed 12-1-99; 8:45 am]

BILLING CODE 6750-01-M

## FEDERAL TRADE COMMISSION

### Extension of Time For Submitting Views Regarding Draft Antitrust Guidelines For Collaborations Among Competitors

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission ("FTC" or "Commission") is extending the period for submission of views regarding the Antitrust Guidelines for Collaborations Among Competitors, issued in draft by the FTC and the U.S. Department of Justice ("the Agencies"). See 64 FR 54483 (1999). The Agencies issued the Guidelines in draft form to provide an opportunity for submission of advice and suggestions from businesses, consumers, and antitrust practitioners that will assist in ensuring that the Guidelines achieve their goals. In order to allow additional time for preparation of views, the Commission has extended the period for filing submissions through February 4, 2000.

**DATES:** Views should be submitted as specified below by February 4, 2000.

**ADDRESSES:** To facilities efficient review, all views should be submitted in written and electronic form. Six hard

copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

Submissions should be captioned "Draft Antitrust Guidelines for Collaborations Among Competitors—Submission of Views." Electronic submissions may be made in one of two days. They may be filed on a 3½ inch computer disk, with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format). Alternative, electronic submissions may be sent by electronic mail to [jventure@ftc.gov](mailto:jventure@ftc.gov).

### FOR FURTHER INFORMATION CONTACT:

Policy Planning staff at (202) 326-3712.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 99-31794 Filed 12-7-99; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control And Prevention

[60-Day-00-12]

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information

technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

1. Proposed Projects

Survey of Laboratory Practices for Mycobacterium tuberculosis Drug Susceptibility Testing in the U.S.—New—As part of the continuing effort to support public health objectives of treatment, disease prevention and surveillance programs, the Public Health Practice Program Office (PHPPO), Division of Laboratory Systems seeks to collect information from both public health and private sector laboratories performing drug susceptibility testing on Mycobacterium tuberculosis. Tuberculosis is a continuing public health problem in the United States despite declining case

rates. Although public health efforts have brought multi drug resistant tuberculosis (MDRTB) under control, these MDRTB and other drug resistant isolates will continue to challenge laboratory support for TB control because of higher prevalence rates and potential for transmission in some segments of the U.S. population. To control this health problem, it is imperative that cases of tuberculosis are identified and placed on effective chemotherapy as quickly as possible. Information collected in the survey will be on test methods, drug concentrations, quality assurance, quality control and reporting practices. The survey will also collect information regarding the type of laboratories where testing is performed, the number of tests performed, testing for primary or secondary anti-tuberculosis drugs and turnaround time for reporting susceptibility test results to

the clinician and public health programs. This survey will provide CDC with information to facilitate standard use of drugs and concentrations tested, interpretation of test results, and laboratory reports so that the information for the clinician is consistent regardless of the laboratory performing testing. This 25-question survey will be mailed to 200 laboratories which are directly involved in Mycobacterium tuberculosis susceptibility drug testing. The amount of time required for completion of the survey will be 30-45 minutes for each respondent. The only cost to the respondent is the time involved in completion of the survey. Results of the survey will be published in a peer-reviewed journal and shared at national meetings to encourage the adoption of standard practices. There is no cost to the respondent.

No. of respondents	No. of responses per respondent	Hrs/response	Response burden
200 .....	1	30/60	100

Dated: December 1, 1999.  
**Nancy Cheal,**  
*Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.*  
[FR Doc. 99-31741 Filed 12-7-99; 8:45 am]  
**BILLING CODE 4163-18-P**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day-00-10]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.  
Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

1. Proposed Project

Evaluation of the diffusion of HIV and tobacco-use prevention education programs from national training to the community level—NEW—The National center for Chronic Disease Prevention and Health Promotion seeks OMB approval for an evaluation of the diffusion of CDC identified effective education programs from national training to the community level to be conducted from 2000 to 2002. The project aims to enhance the adoption and implementation of effective HIV and tobacco-use prevention programs. As such, it is directly related to the CDC FY 2000 performance plan to reduce smoking among young people 50% by 2003, and to reduce the incidence of HIV/AIDS through the dissemination of HIV prevention education programs. CDC will study the diffusion of three

prevention programs (2 HIV; 1 tobacco). Half of the participants attending the training will be randomly selected, by state, to receive additional technical assistance and diffusion action planning. This evaluation will follow two cohorts of respondents: *Cohort A* (Master Trainers and Coalition Leaders) includes education and public health agency administrators, health education trainers, and community organization and community media leaders who attended the national training and who will diffuse the program in their states and communities; *Cohort B* (Local Health Educators and Coalition Members) includes local administrators, teachers, and health educators in local health departments, schools, media groups, and community organizations, who attended a training provided by a Master Trainer/Coalition Leader. Cohort A will complete two 30-minute surveys at 6 months and 12 months post-training and also participate in one 90-minute focus group conducted by phone. Cohort B will receive one 45-minute survey six months after they have received training.  
We assume that each Cohort A participant will, in turn, train 30 local health educators or coalition members (Cohort B). The total estimated cost to respondents is \$54,848 assuming an average wage of \$22.96 and \$22.58 for cohorts A and B respectively.

Respondents	Number of respondents	Number of responses per respondent	Burden per response	Total burden hours
Cohort A:				
HIV .....	57	3	0.83	142.49
Tobacco .....	40	3	0.83	99.99
Cohort B:				
HIV .....	1710	1	0.75	1282.50
Tobacco .....	1200	1	0.75	900.00
<b>TOTAL</b> .....	<b>3007</b>			<b>2424.03</b>

Dated: December 1, 1999.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 99-31742 Filed 12-7-99; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control And Prevention

[60Day-00-11]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports

Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

#### 1. Proposed Projects

Survey of Laboratory Practices for Nucleic Acid Amplification Tests for Mycobacterium tuberculosis (M.tb NAA)—New—As part of the continuing effort to support public health objectives of treatment, disease prevention and surveillance programs, the Public Health Practice Program Office (PHPPO), Division of Laboratory Systems seeks to collect information from both public health and private sector laboratories performing nucleic acid amplification tests for Mycobacterium tuberculosis. Mycobacterium tuberculosis (TB) infection has reemerged as a significant public health concern in the United States. Since TB is easily transmitted, early detection of infection is imperative for control and prevention. CDC guidelines have advocated the use of the acid-fast bacilli smear (AFB), followed by culture, to confirm a diagnosis of tuberculosis. However, research and development have led to the design and marketing of nucleic acid amplification-based methods for the rapid detection of Mycobacterium tuberculosis (M.tb) directly from clinical sputum specimens. Since the FDA approval of two commercial M.tb NAA, CDC has become keenly interested in the analytic accuracy and clinical utility of these tests, especially from the standpoint of early detection and control of tuberculosis.

Literature reports indicate variability in sensitivities, specificities, and predictive values for M.tb NAA, depending on the experimental design, the population being studied, and the test methodology. Overall, both sensitivity and specificity are reported

to be relatively high compared with AFB smear and culture results. However, there are several important potential sources of error including contamination problems inherent to nucleic acid technology, cross-contamination with other mycobacteria, sub-optimal laboratory practices, and unknown factors. The use of M.tb NAA tests for rapidly diagnosis may be useful for controlling TB, particularly in high prevalence populations. However, the clinical utility and efficacy of M.tb NAA tests remains in question. Because of the uncertainty surrounding the analytical accuracy and clinical validity of the tests, the potential sources of error, and the subsequent potential expense of incorrect treatment.

The goal of the proposed project is to collect laboratory practice data, in conjunction with performance data, through a survey administered to current participants in the CDC's M.tb NAA Performance Evaluation Program, to determine if laboratory practices are associated with the risk of errors in these tests. Information collected in the survey will be on test methods, quality assurance, quality control and reporting practices, and test utilization. The survey will also collect demographic information regarding the types of laboratories where testing is performed. CDC will use this data as a primary source of critical information to develop laboratory guidelines and recommendations for performance and utilization of M.tb NAA tests. The only cost to the participants will be the time required to complete the survey, i.e., approximately 30 minutes each. The benefit of this data and the subsequent recommendations to public health will be the utilization of enhanced testing practices in the control and elimination of M. tuberculosis infection in the United States. There is no cost to the respondent.

No. of respondents	No. of responses per respondent	Hrs/response	Response burden
100 .....	30	30/60	50

Dated: December 1, 1999.

**Nancy Cheal,**

*Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 99-31743 Filed 12-7-99; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control And Prevention

[60Day-00-09]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

#### 1. Proposed Projects

National Surveillance System for Hospital Health Care Workers (NaSH)—Reinstatement—National Center for Infectious Diseases (NCID)—has developed a surveillance system called the National Surveillance System for

Hospital Health Care Workers (NaSH) that focuses on surveillance of exposures and infections among hospital-based health care workers (HCWs). NaSH (OMB 0920-0417) includes standardized methodology for various occupational health issues. It is a collaborative effort of the Hospital Infections Program, National Center for Infectious Diseases (NCID); the Hepatitis Branch, Division of Viral and Rickettsial Diseases, NCID; the Division of Tuberculosis (TB) Elimination, National Center for HIV, STD, and TB Prevention; the National Immunization Program (NIP), and the National Institute for Occupational Safety and Health (NIOSH).

NaSH consists of modules for collection of data about various occupational issues. Baseline information about each HCW such as demographics, immune-status for vaccine-preventable diseases, and TB status is collected when the HCW is enrolled in the system. Results of routine tuberculin skin test (TST) are collected and entered in the system every time a TST is placed and read; follow-up information is collected for HCWs with a positive TST. When an HCW is exposed to blood/bloodborne pathogen, to a vaccine-preventable disease (VPD), or to an infectious TB patient/HCW, epidemiologic data are collected about the exposure. For HCWs exposed to a bloodborne pathogen (i.e., HIV, HCV, or HBC) and for susceptible HCWs exposed to VPDs, additional data are collected during follow-up visits. Once a year, hospitals complete a survey to provide denominator data and every 2-5 years, the hospitals perform a survey to assess the level of underreporting of needlesticks (HCW Survey). Optionally, hospitals may collect information about HCW noninfectious occupational injuries such as acute musculoskeletal injuries. Data are entered into the software and transmitted on diskette to CDC. No HCW identifiers are sent to CDC. This system is protected by the Assurance of Confidentiality (308d).

Data collected in NaSH will assist hospitals, HCWs, health care organizations, and public health agencies. This system will allow CDC to monitor national trends, to identify newly emerging hazards for HCWs, to

assess the risk of occupational infection, and to evaluate preventive measures, including engineering controls, work practices, protective equipment, and postexposure prophylaxis to prevent occupationally acquired infections. Hospitals that volunteer to participate in this system benefit by receiving technical support and standardized methodologies, including software, for conducting surveillance activities on occupational health.

This system was developed and piloted in large teaching hospitals (RFP-200-94-0834(P) and RFP-200-96-0524(P)). The first pilot included four hospitals and the second, five. After the refinement pilot in an additional 13 hospitals (PA-786 and interagency agreements), participation in NaSH became voluntary. The system is being made available to all acute-care hospitals in the United States wishing to participate voluntarily in the project. We anticipate no more than 100 hospitals participating by the end of fiscal 2000 and potentially 150 by fiscal 2002. To participate in NaSH, hospitals are required to provide information on all exposures to infectious agents, baseline information on the exposed HCWs, as well as the underreporting and hospital surveys.

A new component of NaSH will be a web-based surveillance for occupational exposures to blood that can be used by any health care facility and will meet OSHA requirements and needs mandated by national and state legislation. Referred to as "NaSH Lite", this module is an abbreviated version of the bloodborne pathogen exposure module. Data collected through NaSH Lite will help create a national database for benchmarking and for tracking trends in sharps-injuries as well as help health care facilities to record and prevent exposures. This module will be developed with OSHA input and in conjunction with state health departments. In addition, data collected through NaSH Lite will assist health care facilities to select, implement, and evaluate strategies (including safety devices) to prevent percutaneous exposures.

Form	No. of respondents (hospitals)	No. of responses/ Respondent	Avg. burden/ response (in hrs.)	Total (in hrs.)
Baseline Information .....	150	1,000	20/60	50,000
TST.				
TST Result .....	50	1,000	10/60	8,333
Positive TST .....	50	100	10/60	833
Exposure to Blood.				
Exposure .....	150	125	25/60	7,813
Exposure (NaSH Lite/abbreviated/form) .....	1,000	10	10/60	66
Exposure to VPD.				
Summary .....	150	3	20/60	150
HCW .....	150	10	20/60	500
Exposure to TB .....	150	3	30/60	225
Noninfectious Injury .....	60	1,000	10/60	10,000
HCW Survey .....	75	500	10/60	6,250
Hospital Survey .....	150	1	2	300
TOTAL .....				86,720

Dated: December 1, 1999.

A different number of hospitals will be completing each of the separate forms listed above. The number of respondents is the number of hospitals. The number of responses per respondent varies with the form.

The maximum total burden hours may reach 86,720. (The total estimated maximum cost to respondents may be \$1,300,800 [\$15 an hour for hospital personnel who will collect/input the data].)

Since all of the data collection activities except the HCW survey, outlined in the modules are currently routinely done by infection control practitioners and employee health, personnel health, and/or occupational medicine personnel in hospitals with existing well established surveillance programs, the only additional burden for some hospitals participating in the NaSH system is the time needed for data entry and transmission of data to CDC. Thus, the real burden hours and burden cost could be significantly less. The only activity that may not be routinely performed by the hospitals is the survey to assess underreporting of needlesticks (HCW survey).

**Nancy Cheal,**

*Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 99-31744 Filed 12-7-99; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30DAY-06-00]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

#### Proposed Project

National Disease Surveillance Program—I. Case Reports (0920-0009)—Reinstatement—The National Center for Infectious Disease (NCID)—Formal surveillance of 19 separate reportable diseases has been ongoing to meet the public demand and scientific interest for accurate, consistent, epidemiologic data. These ongoing diseases include: bacterial meningitis, dengue, kawasaki

syndrome, legionellosis, Hansen's Disease, lyme disease, malaria, pertussis, plague, poliomyelitis, psittacosis, Reye Syndrome, Tetanus, Tick-borne Rickettsial Disease, Toxic Shock Syndrome, toxocariasis, trichinosis, typhoid fever, and viral hepatitis. Case report forms enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases. This information is used to direct epidemiologic investigations, to identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and to develop guidelines for the prevention of treatment. It is also used to recommend target areas in most need of vaccinations for certain diseases and to determine development of drug resistance.

Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. The total annual burden hours are 27,075.

Respondents	No. of respondents	No. of responses/ respondent	Average burden/ response (in hrs.)
Health Care Workers .....	125,214	1	30/60

Dated: December 1, 1999.

**Nancy Cheal,**

*Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 99-31745 Filed 12-7-99; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Promulgation for Fiscal Year 2001

**AGENCY:** Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Notification of allocation of title XX—social services block grant allotments for Fiscal Year 2001.

**SUMMARY:** The allotments to States for Fiscal Year 2001 are based upon the authorization set forth in section 2003(c) of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately. The individual allotments will be available December 15, 1999 on the ACF homepage on the internet: <http://www.acf.dhhs.gov/programs/ocs/ssbg>.

Future notification of allotments for SSBG will no longer be published in the **Federal Register**, but will be available on the internet address given above by December 1st of each succeeding year.

**FOR FURTHER INFORMATION CONTACT:** Margaret Washnitzer, (202) 401-2333.

**SUPPLEMENTARY INFORMATION:** The allotments For Fiscal Year 2001 are based upon the Bureau of Census population statistics contained in its report "Estimates of the Population of States. Annual Time Series, July 1, 1990 to July 1, 1998" (Press Release CB98-242, December 31, 1998), and "1990 Census of Population and Housing" (CPH-6-AS and CPH-6-CNMI) published April 1992, which are the most recent data available from the

Department of Commerce at this time as to the population of each State and each Territory.

**EFFECTIVE DATE:** The allotments shall be effective October 1, 2000.

Dated: December 1, 1999.

**Donald Sykes,**

*Director, Office of Community Services.*

[FR Doc. 99-31820 Filed 12-7-99; 8:45 am]

BILLING CODE 4184-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. 99M-1521, 99M-1980, 99M-1696, 99M-1981, 99M-2028, 99M-1520, 99M-1982, 99M-0150, 99M-0255, 99M-2016, 99M-2015, 99M-0871, 99M-0870, 99M-1851]

#### Medical Devices; Availability of Safety and Effectiveness Summaries for PMA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of premarket application (PMA) approvals. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMA's through the Internet and the agency's Dockets Management Branch.

**ADDRESSES:** Summaries of safety and effectiveness are available on the Internet at <http://www.fda.gov/cdrh/pmpage.html>. Copies of summaries of safety and effectiveness are also available by submitting a written request to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document when submitting a written request.

**FOR FURTHER INFORMATION CONTACT:** Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2186.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to

revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet at <http://www.fda.gov>; by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch; and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMA's and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMA's for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure explained previously from April 1, 1999, through June 30, 1999. There were no denial actions during this period. The list provides the manufacturer's name, the generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMA'S MADE AVAILABLE APRIL 1, 1999, THROUGH JUNE 30, 1999

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P870072(S5)/99M-1521	Thoratec Laboratories Corp.	Thoratec® Ventricular Assist Device	May 21, 1998
P970061/99M-1980	Boston Scientific—SCIMED	SCIMED Radius Coronary Stent with Delivery System	July 16, 1998
P980001/99M-1696	Boston Scientific Corp.	NIR ON™ Ranger™ Premounted Stent System	August 11, 1998
P970024/99M-1981	Angeion Corp.	Defibrillator (ICD) System and the Angeflex™ Defibrillation Lead System	August 19, 1998
P980009/99M-2028	Boston Scientific Corp.	Magic Wallstent Endoprosthesis	September 29, 1998
P920014(S7)/99M-1520	Thermo Cardiosystems, Inc.	Heartmate® VE LVAS	September 29, 1998
P960006/99M-1982	Guidant Corp.	Sweet Tip® Rx Steroid Eluting Lead	October 2, 1998
H980005/99M-0150	NeuroControl Corp.	VOCARE® Bladder System	December 28, 1998
H980008/99M-0255	NeuroControl Corp.	VOCARE® Bladder System	February 19, 1999
P980003/99M-2016	Cardiac Pathways Corp.	Chilli® Cooled RF Ablation System	February 2, 1999
P980037/99M-2015	Possis Medical, Inc.	Angiojet Rheolytic Thrombectomy LF140	March 12, 1999
P850020(S11)/99M-0871	Cypress Bioscience, Inc.	Prosorba™ Column	March 15, 1999
P920023(S7)/99M-0870	American Medical Systems, Inc.	Urolume Endoprosthesis	March 29, 1999
P960016/99M-1851	Daig Corp.	Radio Frequency—Powered Cardiac Catheter Ablation System	May 4, 1999

Dated: November 24, 1999.

**Linda S. Kahan,**  
Deputy Director for Regulations Policy, Center  
for Devices and Radiological Health.

[FR Doc. 99-31697 Filed 12-7-99; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. 99M-0293, 99M-2168, 99M-2672, 99M-2605, 99M-2671, 99M-2338, 99M-1167, 99M-1306, 99M-1073, 99M-2143, 99M-2606, 99M-2169, 99M-2144, 99M-2748, 99M-2551, and 99M-4134]

### Medical Devices; Availability of Safety and Effectiveness Summaries for PMA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of premarket application (PMA) approvals. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMA's through the Internet and the agency's Dockets Management Branch.

**ADDRESSES:** Summaries of safety and effectiveness are available on the Internet at <http://www.fda.gov/cdrh/pmapage.html>. Copies of summaries of safety and effectiveness are also available by submitting a written request to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document when submitting a written request.

**FOR FURTHER INFORMATION CONTACT:** Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2186.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet at <http://www.fda.gov>; by placing the summaries

of safety and effectiveness on the Internet and in FDA's Dockets Management Branch; and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMA's and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a



PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMA's for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure explained previously from July 1, 1999, through September 30,

1999. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.— LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMA'S MADE AVAILABLE JULY 1, 1999, THROUGH SEPTEMBER 30, 1999

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P930016(S5)/99M-0293	Visx, Inc.	Visx Excimer Laser System Models "B"	January 29, 1998
P970032/99M-2168	BIEX, Inc.	SalEst™ System	April 29, 1998
P950015/99M-2672	PLC Medical Systems, Inc.	The Heart Laser™ CO2 Laser System for Transmyocardial Revascularization	August 20, 1998
P980012/99M-2605	Baxter Healthcare Corp.	Novacor® LVAS	September 29, 1998
P980035/99M-2671	Medtronic, Inc.	Medtronic Kappa™ 700/600 Series Pulse Generators and Model 9953 Software	January 29, 1999
P970029/99M-2238	Eclipse Surgical Technologies, Inc.	TMR Holmium Laser System	February 11, 1999
P980031/99M-1167	KeraVision, Inc.	ICRS (Intrastromal Corneal Ring Segments)	April 9, 1999
P970004(S4)/99M-1306	Medtronic, Inc.	Medtronic Interstim Contenance Control System	April 15, 1999
P970033/99M-1073	TransScan Medical, Inc.	T-Scan 2000	April 16, 1999
P980046/99M-2143	Home Access Health Corp.	Hepatitis C CheckSM/Express	April 28, 1999
D970003/99M-2606	Guidant Corp.	Guidant PULSAR™/PULSAR Max™	June 3, 1999
P980022/99M-2169	Minimed Technologies, Inc.	Continuous Glucose Monitoring System	June 15, 1999
P970018/99M-2144	AutoCyte, Inc.	AutoCyte Prep System	June 17, 1999
P950021(S1)/99M-2748	Bayer Corp.	Bayer Immuno 1™ PSA Assay	June 25, 1999
P980052/99M-2551	TMJ Concepts	TMJ Concepts Patient-Fitted TMJ Reconstruction Prosthesis	July 2, 1999
H990004/99M-4134	Nitinol Medical Technologies, Inc.	CardioSEAL Septal Occlusion System	September 8, 1999

Dated: November 24, 1999.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 99-31699 Filed 12-7-99; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 99D-4910]

#### **Draft Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3." This

draft guidance document is intended to assist facilities and their personnel to implement the Mammography Quality Standards Act of 1992 (the MQSA).

**DATES:** Written comments concerning this draft guidance must be received by March 8, 2000.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document # 3" to the Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

Submit written comments concerning this draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

#### **FOR FURTHER INFORMATION CONTACT:**

Charles A. Finder, Center for Devices and Radiological Health (HFZ-240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301-594-3332.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The MQSA was passed on October 27, 1992, to establish national quality standards for mammography. After October 1, 1994, the MQSA required all mammography facilities, except facilities of the U.S. Department of Veterans Affairs, to be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). The authority to approve accreditation bodies and to certify facilities was delegated to FDA by the Secretary to FDA. On October 28, 1997, FDA published the MQSA final regulations in the **Federal Register**. The final regulations became effective April 28, 1999, and replaced the interim regulations (58 FR 67558 and 58 FR 67565). Development of this draft

guidance document began in March 1999.

## II. Significance of Guidance

This draft guidance document represents the agency's current thinking on the final regulations implementing the MQSA. The draft guidance is not final nor is it in effect at this time. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

## III. Electronic Access

In order to receive "Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1496) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH Home Page includes "Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document # 3," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, "Mammography Matters," and other device-oriented information. The CDRH home page may be accessed at <http://www.fda.gov/cdrh>. "Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document # 3" will be available at <http://www.fda.gov/cdrh/mammography>.

## IV. Comments

Interested persons may, on or before March 8, 2000, submit to Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 24, 1999.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 99-31777 Filed 12-7-99; 8:45 am]

**BILLING CODE 4160-01-F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 99D-4809]

#### Draft Guidance for Industry on Applications Covered by Section 505(b)(2); Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Applications Covered by Section 505(b)(2)." A section 505(b)(2) application is a new drug application (NDA) for which one or more of the investigations relied upon by the applicant for approval were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted. This draft guidance also provides information on procedures for submitting an application for approval of a change from an approved drug. **DATES:** Written comments on the draft guidance may be submitted by February 7, 2000. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Copies of this draft guidance for industry are available on the Internet at <http://www.fda.gov/cder/guidance/index.htm>. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD-210), Center for Drug Evaluation and Research, Food and

Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

#### FOR FURTHER INFORMATION CONTACT:

Khyati N. Roberts, Center for Drug Evaluation and Research (HFD-6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-6779.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a draft guidance for industry entitled "Applications Covered by Section 505(b)(2)." Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) describes three types of NDA's: (1) An application that contains full reports of investigations of safety and effectiveness (section 505(b)(1) of the act); (2) an application that contains full reports of investigations of safety and effectiveness but where at least one of those reports required for approval was not conducted by or for the applicant or for which the applicant has not obtained a right of reference (section 505(b)(2) of the act); or (3) an application that contains information to show that the proposed product is identical in active ingredient, dosage form, strength, route of administration, labeling, quality, performance characteristics, and intended use, among other things, as a previously approved product (section 505(j) of the act).

Section 505(b)(2) of the act was added to the act by the Drug Price Competition and Patent Term Restoration Act of 1984 (Hatch-Waxman amendments). It explicitly allows FDA to rely, for approval of an NDA, on data not developed by the applicant. Section 505(b)(2) and (j) of the act replaced FDA's paper NDA policy, which had permitted an applicant to rely on studies published in the scientific literature to demonstrate the safety and effectiveness of duplicates of certain post-1962 pioneer drug products (46 FR 27396, May 19, 1981). Enactment of the generic drug approval provision of the Hatch-Waxman amendments ended the need for approvals of duplicate drugs through the paper NDA process. Specifically, section 505(j) of the act allows for approval of duplicates of approved NDA's on the basis of chemistry and bioequivalence data. Section 505(b)(2) of the act allows for approval of applications other than those for duplicate products.

This draft guidance identifies the types of applications that can be submitted under section 505(b)(2) of the act. A section 505(b)(2) application is an NDA submitted under section 505(b)(1) of the act and approved under section 505(c) of the act. This draft guidance also provides further information and amplification of information stated at 21 CFR 314.54.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on section 505(b)(2) applications. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1999.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 99-31698 Filed 12-7-99; 8:45 am]

**BILLING CODE 4160-01-F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[Document Identifier: HCFA-R-0283]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper

performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New collection; Title of Information Collection: Market Survey of Fraud, Waste and Abuse Detection Software; *Form No.:* HCFA-R-0283 (OMB # 0938—new); *Use:* This information collection tool is essential to providing the Health Care Financing Administration (HCFA) a vehicle to ascertain cutting edge fraud, waste, and abuse detection products. HCFA and its contractors presently use a number of these tools, as do other segments of government, the health care industry, and industry generally. New products taking advantage of new technologies are in continuous development. This completely voluntary survey will ensure that HCFA is vigilant in identifying new advances to help fight the scourge of Medicare fraud and abuse.; *Frequency:* Annually; *Affected Public:* Business or other for profit, and Not for profit institutions; *Number of Respondents:* 400; *Total Annual Responses:* 450; *Total Annual Hours:* 1,350.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 26, 1999.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 99-31703 Filed 12-7-99; 8:45 am]

**BILLING CODE 4120-03-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected under the Wild Bird Conservation Act of 1992. This notice is provided under Section 112, paragraph 4, of the Wild Bird Conservation Act of 1992, and Title 50, of the Code of Federal Regulations, § 15.26(c).

Applicant: Jerry Jennings, Fallbrook, CA, on behalf of the Cooperative Breeding Program for Keel-billed toucan, Red-breasted toucan, Saffron toucanet, and Chestnut-eared aracari (CB006). The applicant wishes to amend the approved cooperative breeding program to include the Ariel toucan (*Ramphastos vitellinus ariel*), Channel-bill toucan (*Ramphastos vitellinus vitellinus*), Couvier's toucan (*Ramphastos tucanus couvieri*), and the Toco toucan (*Ramphastos toco*). The Toucan Preservation Center maintains the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of these documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358-2095); FAX: (703/358-2298).

Dated: December 2, 1999.

**Andrea Gaski,**

*Acting Chief, Branch of Operations, Office of Management Authority.*

[FR Doc. 99-31762 Filed 12-7-99; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[OR-957-00-1420-00: GP0-0034]****Filing of Plats of Survey: Oregon/  
Washington****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon thirty (30) calendar days from the date of this publication.

**Willamette Meridian**

Oregon

T. 14 S., R. 2 W., accepted October 22, 1999  
 T. 38 S., R. 4 W., accepted October 22, 1999  
 T. 13 S., R. 6 W., accepted November 5, 1999  
 T. 21 S., R. 6 W., accepted November 5, 1999  
 T. 31 S., R. 5 W., accepted November 15, 1999

Washington

T. 33 N., R. 17 E., accepted September 1, 1999

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

**FOR FURTHER INFORMATION CONTACT:**

Bureau of Land Management (1515 S.W. 5th Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: November 22, 1999.

**Robert D. DeViney, Jr.,***Branch of Realty and Records Services.*

[FR Doc. 99-31702 Filed 12-7-99; 8:45 am]

**BILLING CODE 4310-33-M****DEPARTMENT OF THE INTERIOR****Minerals Management Service****Agency Information Collection  
Activities: Submitted for Office of  
Management and Budget Review,  
Comment Request****AGENCY:** Minerals Management Service (MMS), Interior.**ACTION:** Notice of Information Collection.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled Request to Exceed Regulatory Allowance Limitation, Form MMS-4393, OMB Control Number 1010-0095, which expires on April 30, 2000.

**DATES:** Written comments should be received on or before February 7, 2000.

**ADDRESSES:** The mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A-613, Denver Federal Center, Denver, Colorado 80225. Email address is RMP.comments@mms.gov.

**Public Comment Procedure**

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225-0165. Courier or overnight delivery address is Building 85, Room A-613, Denver Federal Center, Denver, Colorado 80225. You may also comment via the Internet to RMP.comments@mms.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Request to Exceed Regulatory Allowance Limitation, Form MMS-4393, OMB Control Number 1010-0095, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message,

contact David S. Guzy directly at (303) 231-3432.

We will post public comments after the comment period closes on the Internet at <http://www.rmp.mms.gov>. You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231-3432, FAX (303) 231-3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:**

Dennis C. Jones, Rules and Publications Staff, phone (303) 231-3046, FAX (303) 231-3385, email [Dennis.C.Jones@mms.gov](mailto:Dennis.C.Jones@mms.gov).

**SUPPLEMENTARY INFORMATION:** Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency "to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The Department of the Interior (DOI) is the department within the Federal Government responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior

(Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

The MMS Royalty Management Program (RMP) is proposing to continue the use of Form MMS-4393, Request to Exceed Regulatory Allowance Limitation, to be used by royalty payors on Federal or Indian mineral leases. The payors will use the form when requesting MMS approval to exceed established transportation or processing allowance limits.

To request permission to exceed an allowance limit, royalty payors must write a letter to MMS providing the reasons why a higher allowance limit is necessary. Although the request to exceed an allowance limit is voluntary on the part of the payors and results in a benefit to them, many times payors have not provided all of the data needed by MMS to approve or deny a request. The followup necessary to obtain required information creates an additional burden for both the payor and the Government. RMP developed Form MMS-4393 to be included with the payor's request for approval to exceed the allowance limit. The form ensures that MMS receives the lease data required to make a decision on the request by including the Accounting Identification Number identifying the lease, the product code identifying the product being transported or processed, and the selling arrangement used to identify the marketing outlet for the product. These are the necessary data that have been missing from many of the requests in the past. We estimate the annual burden to complete this information collection is 30 minutes.

Dated: December 2, 1999.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*  
[FR Doc. 99-31727 Filed 12-7-99; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Submitted for Office of Management and Budget Review, Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of Information Collection.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled Payor Information Form, Solid Minerals, Form MMS-4030, OMB Control Number 1010-0064, which expires on May 31, 2000.

**DATES:** Written comments should be received on or before February 7, 2000.

**ADDRESSES:** The mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A-613, Denver Federal Center, Denver, Colorado 80225. Email address is [RMP.comments@mms.gov](mailto:RMP.comments@mms.gov).

**PUBLIC COMMENT PROCEDURE:** If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225-0165. Courier or overnight delivery address is Building 85, Room A-613, Denver Federal Center, Denver, Colorado 80225. You may also comment via the Internet to [RMP.comments@mms.gov](mailto:RMP.comments@mms.gov). Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: [ICR title], OMB Control Number 1010-[ ], and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231-3432.

We will post public comments after the comment period closes on the Internet at <http://www.rmp.mms.gov>. You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231-3432, FAX (303) 231-3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's

identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### FOR FURTHER INFORMATION CONTACT:

Dennis C. Jones, Rules and Publications Staff, phone (303) 231-3046, FAX (303) 231-3385, email [Dennis.C.Jones@mms.gov](mailto:Dennis.C.Jones@mms.gov).

**SUPPLEMENTARY INFORMATION:** Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency "to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*." Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The Department of the Interior (DOI) is the department within the Federal Government responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws.

We perform the royalty management functions for the Secretary. We utilize the Auditing and Financial System and Common Reference Database (AFS/CRD) to store royalty information and reference data. Reference data is initially submitted and subsequently updated by lessees who produce minerals from leased Federal and Indian lands. The Payor Information Form (PIF), Solid Minerals, Form MMS-4030 (see <http://www.rmp.mms.gov/custserv/pubserv/forms.htm>), is used by lessees for this information collection.

The information on Form MMS-4030 is used to establish a database of new payors/leases, lease-level (rent, advance and minimum royalty) obligations, other royalty/lease data, and to change existing royalty/lease data on AFS/CRD. The functions that we perform, including fund allocation and distribution, exception processing, AFS/PAAS error correction, audit and billing activities and database inquiries, are dependent upon the integrity of the AFS/CRD information. We estimate that the completion of Form MMS-4030 requires 20 minutes to complete and 30 minutes for the associated recordkeeping.

Dated: December 2, 1999.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*

[FR Doc. 99-31728 Filed 12-7-99; 8:45 am]

**BILLING CODE 4310-MR-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-811 (Final)]

### Drams of One Megabit and Above From Taiwan

#### Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Taiwan of dynamic random access memory semiconductors (DRAMs) of one megabit and above, provided for in subheadings 8542.13.80 and 8473.30.10 through 8473.30.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).<sup>2</sup>

#### Background

The Commission instituted this investigation effective October 22, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by Micron Technology, Boise, ID. The final phase of the

investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of DRAMs of one megabit and above from Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 17, 1999 (64 FR 32521). The hearing was held in Washington, DC, on October 19, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 2, 1999. The views of the Commission are contained in USITC Publication 3256 (December 1999), entitled Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan: Investigation No. 731-TA-811 (Final).

Issued: December 3, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99-31819 Filed 12-7-99; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Notice of Extension of Time for Comments Relating to the Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given of an extension of time under which the Department of Justice will receive comments relating to the proposed Consent Decree in *United States v. Bay Chemical Company, et al.*, Civil Action No. C99-5521RJB. The proposed Consent Decree was lodged with the United States District Court for the Western District of Washington on October 5, 1999 and previously noticed in the **Federal Register** on October 26, 1999. The earlier noticed comment period would have expired on November 25, 1999, but comments will now be considered if received by December 9, 1999.

The complaint in this action seeks to recover, pursuant to Section 107 of the Comprehensive Environmental

Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607 response costs incurred and to be incurred by the U.S. Environmental Protection Agency ("EPA") in the Hylebos Waterway Problem Areas in Operable Unit 1 ("OU1") of the Commencement Bay Nearshore/Tideflats Superfund Site (hereinafter "the Site") located in Tacoma, Washington. The defendants include owners and operators of properties within two problem areas of one of the nine operable units at the Site.

The proposed Consent Decree embodies an agreement with seventeen potentially responsible parties ("PRPs") pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, to pay approximately \$762,880 in past and future response costs associated with the Hylebos Waterway Problem Areas of OU1 of the Site. The above-described payments include a premium to be paid by each settling party to offset the risks that actual future response costs will exceed current estimates.

The Consent Decree provides the settling defendants with releases for civil liability for response costs under Sections 106 and 107 of CERCLA relating to the Hylebos Waterway Problem Areas of OU1 of the Site. The Consent Decree explicitly reserves the United States' claims for response costs associated with other operable units and problem areas of the Site, natural resource damages, and other potential United States' claims.

Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044-7611, should refer to *United States v. Bay Chemical Company, et al.*, DOJ Ref. No. 90-11-2-06010, and should be received by December 9, 1999.

The proposed consent decree may be examined at the Office of the United States Attorney, 3600 Seafirst Plaza, 800 5th Avenue, Room 3601, Seattle, WA 98104, and the Region X Office of the Environmental Protection Agency, Region X Records Center, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, Environmental Enforcement Section, Post Office Box 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$175.00 (25 cents per

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Chairman Bragg dissenting. Commissioners Crawford and Askey did not participate.

page reproduction costs), payable to the Consent Decree Library.

**Joel Gross,**

*Chief, Environmental Enforcement Section,  
Environment and Natural Resources Division.*

[FR Doc. 99-31787 Filed 12-7-99 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States v. Nassau Metals Corporation*, Civil Action No. 4:CV 99-2042 (M.D. Pa.) was lodged with the court on November 23, 1999.

The proposed decree resolves claims of the United States against Nassau Metals Corporation under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, for response costs and actions at the MW Manufacturing Superfund Site in Valley Township, Montour County, PA. The decree requires the defendant to reimburse the United States \$6,515,000 in response costs and to implement the EPA-selected remedy for the fifth and final operable unit at the Site. That remedy includes on-site stabilization and capping of contaminated waste materials.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Nassau Metals Corporation*, Civil Action No. 4:CV 99-2042 (M.D. Pa.), DOJ Ref. #90-11-3-06793/1.

The proposed consent decree may be examined and copied at the Office of the United States Attorney, Room 1162, Federal Building, 228 Walnut Street, Harrisburg, PA 17108; or at the Region III Office of the Environmental Protection Agency, c/o Thomas Cinti, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box No. 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$23.25 (25 cents per page reproduction costs), payable to the Consent Decree

Library. A copy of the exhibits to the decree may be obtained from the same source for an additional charge.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section,  
Environmental and Natural Resources  
Division.*

[FR Doc. 99-31788 Filed 12-1-99; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America v. Willowridge Estates, L.L.C., and Rathborne Land Company, Inc.*, Civil Action No. 99-3489 (E.D. La.), was lodged with the United States District Court for the Eastern District of Louisiana on November 17, 1999.

This is a civil action commenced under Sections 309(b) and (d) and 404(s) of the Clean Water Act ("CWA"), 33 U.S.C. 1319(b) and (d), 1344(s), to obtain injunctive relief and civil penalties against Willowridge Estates, L.L.C., and Rathborne Land Co., Inc., ("Defendants"), for the discharge of pollutants into waters of the United States in Saint Charles Parish, Louisiana, without authorization by the United States Department of the Army, and for noncompliance with conditions and limitations of a permit issued under CWA section 404(a), 33 U.S.C. 1344(a), all in violation of CWA section 301(a), 33 U.S.C. 1311(a).

The proposed Consent Decree would resolve these violations and, among other provisions, would require Defendants (1) to pay civil penalties totaling \$620,000, (2) to preserve about 370 acres of neighboring wetlands owned by Defendants, (3) apply to the U.S. Army Corps of Engineers for an after-the-fact permit for the unauthorized discharges and (4) to comply with all terms and conditions of any permit that is issued. The proposed Consent Decree further provides that if the Corps denies the after-the-fact permit, the United States reserves, and the Consent Decree does not affect, the right to issue an administrative order or orders to remove all or part of the fill placed at the Sites, and/or to require mitigation with respect to the unauthorized fill at the Sites.

The Department of Justice will accept written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed

to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Scott J. Jordan, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026-3986, and must refer to *United States of America v. Willowridge Estates, L.L.C., and Rathborne Land Company, Inc.*, DJ Reference No. 90-5-1-4-05482.

The proposed consent decree is on file at the Clerk's Office, United States District Court, Eastern District of Louisiana, 500 Camp Street, New Orleans, Louisiana 70130, and may be examined there to the extent allowed by the rules of the Clerk's Office. In addition, written requests for a copy of the consent decree may be mailed to Scott J. Jordan, Environmental Defense Section, U.S. Department of Justice, P.O. Box 23986, Washington, D.C. 20026-3986, and should refer to *United States v. Willowridge Estates, L.L.C., and Rathborne Land Company, Inc.*, DJ Reference No. 90-5-1-4-05482. All written requests for a copy of the Consent Decree must include the full mailing address to which the Consent Decree should be sent.

**Letitia J. Grishaw,**

*Chief, Environmental Defense Section,  
Environmental and Natural Resources  
Division, Department of Justice.*

[FR Doc. 99-31789 Filed 12-7-99; 8:45 am]

BILLING CODE 4410-15-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302]

### Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-72 issued to Florida Power Corporation (the licensee) for operation of Crystal River Unit 3 (CR-3) located in Citrus County, Florida.

The proposed amendment would increase the licensed capacity for spent fuel assembly storage in the CR-3 Spent Fuel Pool (SFP) and revise the configuration for storage of fresh fuel.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.



The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The LAR [license amendment request] proposes to increase the onsite storage capacity of spent fuel and to revise the fresh fuel-loading configuration. The licensee is replacing the existing spent fuel storage racks with new storage racks with a different neutron absorbing material. The licensee has reanalyzed the criticality of the revised storage configuration for fresh fuel. The replacement storage racks and the revised fuel storage configuration do not affect any structure, system or component, nor process related to the operation of CR-3. As a result, the proposed LAR will not change the probability or consequences of any accidents related to operation previously evaluated. Thus, only those accidents that are related to movement and storage of fuel assemblies could be potentially affected by the proposed LAR. Fuel handling accidents (FHA) are analyzed in Section 14.2.2.3 of the CR-3 Final Safety Analysis Report (FSAR). These include a FHA inside the Reactor Building (RB) and a FHA outside the RB. The LAR involves storage of fuel assemblies, which is an activity conducted outside the RB only. Therefore, only the FHA outside the RB is potentially affected. The FHA outside the RB is postulated as the dropping of a fuel assembly into the spent fuel storage pool that results in damage to a fuel assembly and the release of the gaseous fission products. The current FHA assumes all 208 fuel pins in the dropped assembly are damaged. The results of that analysis demonstrate that the applicable 10 CFR 100.11 dose acceptance criteria are satisfied. Thus, the consequences of a FHA are not increased by the installation of the high-density racks. The high-density racks only increase the storage capacity and do not change the frequency or method for handling fuel assemblies. Thus, the probability of a FHA is not increased.

The increased spent fuel storage capacity will result in a negligible increase in the heat input to the spent fuel pool and its cooling system. The limiting heat load is from the combined impact of stored fuel and a full core off-load. The full core off-load accounts for approximately 90% of that heat load. The increase in stored fuel capacity, numerically less than 10%, is comprised of fuel that has

been stored the longest resulting in less decay heat. Thus, the impact of the increased spent fuel storage capacity on the total heat load is less than 1%.

The increased fuel pool capacity and the revised fuel loading configuration do not increase the probability of a full core off-load.

The FSAR specifies the normal upper limit of the fuel pool cooling system as 160°F. Administrative controls regarding when fuel movements from the reactor to the fuel pool can be completed are implemented to assure this upper limit is not exceeded.

Because neither the probability nor the consequences of a FHA are increased, and because there is not any significant additional heat input to the spent fuel pools, it is concluded that the LAR does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

Onsite storage of spent fuel assemblies in the spent fuel pools is a normal activity that CR-3 has been designed and licensed for. As part of assuring that this normal activity can be performed without endangering public health and safety, the ability of CR-3 to safely accommodate different possible accidents in the spent fuel pools such as dropping a fuel assembly or the misloading of a fuel assembly have been analyzed. The increased spent fuel pool storage capacity proposed by the LAR does not change the methods of fuel movement or fuel storage. Thus, the proposed LAR does not create any new or different kind of accident from those previously evaluated.

The process of replacing the storage racks will involve removing the existing racks from the pool and installing new racks. These movements of the storage racks will be performed with the racks empty of all fuel. Even empty, these racks are of such weight as to be considered heavy loads. Movement of these empty racks create the potential for a heavy load drop. Movement of these empty racks will be restricted such that they will not be moved over any spent fuel stored in the spent fuel pools without the missile shields installed over the spent fuel pools. This will eliminate the potential for a rack to impact stored fuel if it were dropped.

Because only activities currently performed at CR-3 are affected, i.e., the same types of activities will be performed with the increased onsite fuel assembly storage capacity and revised configuration for fresh fuel storage, the LAR does not create the possibility of any new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety?

The CR-3 Improved Technical Specifications (ITS) specifies required margin to criticality (subcriticality margins) for the spent fuel storage racks when fully loaded with spent fuel. This margin is having the effective neutron multiplication factor,  $K_{eff}$ , of the spent fuel storage racks maintained less than or equal to 0.95 when flooded with unborated water. The LAR proposes no change to this margin. The new racks have been analyzed to demonstrate that this

required margin is satisfied when fully loaded with fuel enriched to the maximum enrichment allowed by the CR-3 license. Maintaining this margin is assured by remaining within the limits on initial enrichment and fuel burnup that are specified in the ITS. These limits must be complied with before the fuel can be stored in the spent fuel pool. The LAR proposes revised limits on fuel burnup (no change to fuel enrichment is proposed) to ensure that the existing subcriticality margins are not reduced.

The current CR-3 licensing basis, as reflected by the Final Safety Analysis Report (FSAR), allows the use of administrative controls, e.g., curves of initial fuel assembly enrichment versus burnup, as a means of preventing criticality in the spent fuel pools. The use of these curves would be continued under this proposed amendment. The changes to these curves proposed by this LAR consist of revising the values of burnup and adding notes to restrict loading of certain fuel assemblies to specific configurations. These curves have been included in the CR-3 operating license and their use implemented by site procedures since initial issue of the license. From this previous use CR-3 personnel are familiar with the practice of using administrative controls as curves of fuel assembly enrichment versus burnup for placing fuel assemblies in the spent fuel pool in order to prevent criticality. A mis-loaded fuel assembly was analyzed. The analysis demonstrated that misloading of one assembly does not result in exceeding the criticality margin regulatory limit of  $K_{eff} = 0.95$ . This analysis assumed no neutron poison, i.e., soluble boron, in the spent fuel pool water. This is a conservatism since the license requires a minimum of 1925 ppm boron. (Typically the fuel pool water contains approximately 2000 ppm boron.)

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final



determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 7, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733-4042, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWSA), 42 U.S.C. 10154. Under section 134 of the NWSA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NHPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the general procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated September 16, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web Site, <http://www.nrc.gov> (the Electronic Reading Room).

Dated at Rockville, Maryland, this 1st day of December 1999.

For the Nuclear Regulatory Commission.

**Richard P. Correia,**

*Chief, Section 2 Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 99-31760 Filed 12-7-99; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Revised Reactor Oversight Process Pilot Program Lessons Learned Workshop

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing significant revisions to its processes for overseeing the safety performance of commercial nuclear power plants that include integrating the inspection, assessment, and enforcement processes. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a method for consistently determining the appropriate regulatory actions in response to varying levels of safety performance. The changes are the result of continuing work on a concept as described in SECY-99-007, "Recommendations for Reactor Oversight Process Improvements" dated January 8, 1999, and SECY-99-007A, "Recommendations for Reactor Oversight Improvements (Follow-Up to SECY-99-007)" dated March 22, 1999. In June 1999 the NRC began a six-month pilot program with two sites participating from each region. The purpose of the pilot program is to exercise the new oversight process, identify problems, develop lessons learned, and make any necessary changes before full implementation at all sites currently scheduled for April 2000.

The NRC will hold a public Lessons Learned Workshop to review the results of the pilot program, and identify key issues requiring resolution, and develop proposed actions and approaches to address these. Attendees should be familiar with the key attributes of the new oversight processes and their associated program documents and understand the key differences between the new processes and the existing oversight processes. Information about the revised reactor oversight process and the pilot program is available on the Internet at: [www.nrc.gov/NRR/OVERSIGHT/index.html](http://www.nrc.gov/NRR/OVERSIGHT/index.html)

A preliminary agenda for the workshop will consist of the following:

Day 1: Registration and check-in, background and concept review,

workshop objectives, identification and prioritization of key issues  
Day 2: Workshop sessions addressing identified issues to develop resolutions

Day 3: Workshop sessions addressing identified issues to develop resolutions

Day 4: Presentation of workshop accomplishments

Individuals desiring to attend the workshop may register on the day of the workshop, however pre-registration with the NRC prior to December 20, 1999 is desired. Attendees may pre-register either by mail or electronically (see attached). Pre-registration confirmation notices and the workshop final agenda will be sent out by December 27, 1999.

**DATES:** The workshop will be held from 12:00 p.m. to 5:00 p.m. on Monday, January 10, 2000, from 8:00 a.m. to 5:00 p.m. on Tuesday and Wednesday, January 11 and 12, 2000, and from 8:00 a.m. to 12:00 p.m. on Thursday, January 13, 2000.

**ADDRESSES:** Renaissance Hotel, 999 Ninth Street, NW, Washington, DC, Phone 202-898-9000, Fax: 202-789-4213. Special group rate of \$115.00 is available when registering with the hotel and asking for the "NRC's Regulatory Oversight Process Pilot Program Lessons Learned Workshop" block of rooms. The group rate is subject to applicable state and local taxes, currently 14.5%. The hotel will release these rooms after December 15, 1999.

**FOR FURTHER INFORMATION CONTACT:** Alan Madison, Mail Stop: O5-H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, telephone 301-415-1490.

Dated at Rockville, Maryland, this 16th day of November 1999.

For the Nuclear Regulatory Commission.

**William M. Dean,**

*Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.*

(Electronic Registration Form)

### Online Registration Form

#### NRC Revised Reactor Oversight Process Lessons Learned Workshop

Complete the following form, click on the "Register Me" button to complete and send this request.

You should receive a confirmation of your registration by e-mail two weeks prior to the workshop.

**Note:** This form will enable you to electronically register for the workshop. However, you will need to contact the hotel to register for lodging.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Organization or member of public, if applicable): \_\_\_\_\_  
 E-mail: \_\_\_\_\_  
 Business Phone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Mail Address: \_\_\_\_\_  
 Street: \_\_\_\_\_  
 City: \_\_\_\_\_  
 Zip + 4: \_\_\_\_\_

Special needs or assistance (if any): \_\_\_\_\_

Please indicate in priority order, beginning with number 1 as the most interested session, those topic area groups in which you prefer to participate.

- \_\_\_\_ Performance Indicators  
 \_\_\_\_ Baseline Inspection Procedures  
 \_\_\_\_ Supplemental Inspection Procedures  
 \_\_\_\_ Enforcement  
 \_\_\_\_ Assessment  
 \_\_\_\_ Problem Identification and Resolution  
 \_\_\_\_ Event Response  
 \_\_\_\_ Significance Determination Process  
 \_\_\_\_ Public Confidence/Communication

## REGISTER ME

### Registration Form

#### NRC Revised Reactor Oversight Process Lessons Learned Workshop

**Mail Registration:** Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Inspection Program Branch, Lessons Learned Workshop, Mail Stop O-5H2, Washington, DC 20277-2904

**Electronic Registration:** Send the information on this form to: [JXC4@nrc.gov](mailto:JXC4@nrc.gov)

Or

Go to the Revised Reactor Oversight Process WEB page: [www.nrc.gov/NRR/OVERSIGHT/index.html](http://www.nrc.gov/NRR/OVERSIGHT/index.html)

You should receive a confirmation of your registration two weeks prior to the workshop.

**Note:** This form will enable you to register for the conference. However, you will need to contact the hotel to register for lodging.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Organization or member of public (if applicable): \_\_\_\_\_  
 E-mail: \_\_\_\_\_  
 Business Phone: \_\_\_\_\_  
 Fax Number: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Street: \_\_\_\_\_  
 City: \_\_\_\_\_  
 Zip + 4: \_\_\_\_\_  
 Special needs or assistance (if any): \_\_\_\_\_

Please indicate in priority order, beginning with number 1 as the most interested session, those topic area groups in which you prefer to participate.

- \_\_\_\_ Performance Indicators  
 \_\_\_\_ Baseline Inspection Procedures  
 \_\_\_\_ Supplemental Inspection Procedures  
 \_\_\_\_ Enforcement  
 \_\_\_\_ Assessment  
 \_\_\_\_ Problem Identification and Resolution  
 \_\_\_\_ Event Response  
 \_\_\_\_ Significance Determination Process  
 \_\_\_\_ Public Confidence/Communication

[FR Doc. 99-31761 Filed 12-7-99; 8:45 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42190; File No. SR-CBOE-99-32]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Change the Participation Entitlement of Designated Primary Market-Makers

December 1, 1999.

#### I. Introduction

On June 23, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the participation entitlement of designated primary market-makers ("DPMs"). The proposed rule change was published in the **Federal Register** on September 30, 1999.<sup>3</sup> The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

A DPM's right to participate as a principal in a transaction is generally governed by the principles of time and price priority as set forth in CBOE Rule 6.45. Under this rule, if a DPM is first to respond with the best bid (offer) to a member who is not acting on behalf of the DPM and who has requested a market, the DPM is entitled to 100 percent participation in any resulting transaction. In addition, CBOE Rule 8.80(c)(7)(ii) grants each DPM a right to participate "pro-rata," with market-makers present in the trading crowd. This pro-rata right applies to any transaction in a security allocated to the DPM if the DPM's previously established bid (offer) was equal to the highest bid (lowest offer) in the trading crowd, even is the DPM's bid (offer) is not entitled to priority under CBOE Rule 6.45.<sup>4</sup>

The Exchange has not previously defined the term "Pro-rata." The Modified Trading System Appointments

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 140.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 41904 (September 22, 1999), 64 FR 52813.

<sup>4</sup> The right of a DPM to participate pro-rata, however, does not include trades executed on the Exchange's Retail Automatic Exchange System ("RAES").

Committee ("MTS" Committee"),<sup>5</sup> however, has interpreted a participation entitlement in transactions that occur in a DPM's allocated security (when the DPM's previously established principal bid (offer) was equal to the highest bid (lowest offer) in the trading crowd) to be as follows: an initial 40 percent participation right; a 30 percent participation right for securities with an average daily volume during the previous calendar quarter of at least 2,501 contracts; and no guaranteed participation right when the average daily volume in a security during the previous calendar quarter exceeded 5,000 contracts. In addition, the MTS Committee established a 40 percent participation level for all multiply-traded securities.

The Exchange now proposes to change the participation level. The Exchange proposes to fix the DPM participation right at 30 percent for transactions in all DPM allocated securities that occur at the DPM's previously established principal bid or offer. The 30 percent participation right would apply equally to all allocated securities regardless of their contract volume or whether they are multiply-traded.

The proposal to set the DPM participation right at 30 percent for all DPM allocated securities does not, however, affect the MTS Committee's authority to establish a lower participation right for new DPM appointments or as a remedial action against a DPM that has failed to perform satisfactorily.

#### III. Discussion

After careful review, the Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5)<sup>7</sup> because it is designed to remove impediments to and perfect the mechanism of a free and open market.

The proposed rule change amends the Exchange's established policy relating to the level of DPM participation in transactions occurring at the DPM's previously established bid (offer) for securities allocated to the DPM. Now, instead of staggering the amount of DPM participation based on either the

<sup>5</sup> The MTS Committee is responsible for appointing DPMs and overseeing the Exchange's DPM program.

<sup>6</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

security's average daily volume or its status as multiply-traded, the participation amount will be a simple fixed percentage. Each DPM will be entitled to the same participation amount regardless of the security's volume or status.

The Commission agrees with the Exchange's assertion that the proposal should foster a more equitable result than under the current staggered approach. Now, all DPMs will be entitled to the same amount of participation regardless of the security. Moreover, the fixed percentage should be easier to apply than the current formula. Therefore, the proposal should improve the operation of the DPM program.

The Commission notes that the DPM participation right was established as an incentive to spark interest in the DPM program and to entice DPMs to remain in the program. This purpose is still valid today as the DPM program expands floor-wide. DPMs assume additional affirmative obligations, which are not required of other members. These additional obligations include, among other things, the obligation to be present at the trading post throughout the business day, the obligation to participate at all times in automated execution and order handling systems such as RAES, and the obligation to act as an order book official and maintain the public order book. These additional obligations are required of all DPMs regardless of the volume or multiply-traded status of the DPM's allocated security and, thus, the Exchange's proposal to establish a flat participation entitlement appears reasonable and fair.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-99-32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 99-31779 Filed 12-7-99; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42186; File No. SR-CBOE-99-27]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Customer Communications

November 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 18, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 9.21, *Communications to Customers*, which governs communications from member firms to customers or members of the public. The proposed rule change would permit the use of non-standard worksheets, provided that such worksheets meet the requirements applicable to sales literature, pursuant to Exchange Rule 9.21. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Exchange Rule 9.21, *Communications to Customers*, governs communications between Exchange members and their customers and other members of the public. The Exchange, along with the other options exchanges, has published *Guidelines for Options Communications* ("Guidelines")<sup>3</sup> to explain the customer communications rules of the options exchanges and the interpretations of these rules. Following the recommendations of the Commission's Special Study of the Options Markets, the CBOE and other self-regulatory organizations amended their rules to require uniform options worksheets.<sup>4</sup> The proposed rule change seeks to eliminate the requirement that mandates that standard forms of options worksheets be uniform within a member organization (i.e., for specific types of options and strategies).

Under existing rules, worksheets are deemed sales literature. The proposed rule change will allow a member organization, or its associated person, the ability to tailor worksheets to specific prospective or existing clients, to utilize worksheets that may be commercially available, or to use Exchange or other industry developed worksheets. The Exchange believes that this change would expand the quantity and quality of options worksheets available for member use, thereby enhancing the member's ability to adequately describe the risks and benefits of options. Of course, member organizations may decide to require within their written supervisory procedures that options worksheets be standardized within their respective organizations. So that the Exchange could ensure that worksheets fulfill their objective, worksheets would continue to be subject to the content and approval requirements of material deemed sales literature, as required by existing Exchange Rule 9.21.

##### 2. Statutory Basis

The CBOE believes that the proposal is consistent with Section 6(b) of the

<sup>3</sup> See Securities Exchange Act Release No. 29682 (September 13, 1991), 56 FR 47973 (September 23, 1991) (File No. SR-Amex-90-38; SR-CBOE-90-27; SR-NASD-91-02; SR-NYSE-90-51; and SR-PSE-90-41).

<sup>4</sup> See Report of the Special Study of the Options Market, Chapter V, page 130 (December 22, 1978); Securities Exchange Act Release No. 15575 (Feb. 22, 1979) (Order implementing certain recommendations contained in the Commission's Special Study of the Options Market).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Act<sup>5</sup> in general and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The CBOE expects other self-regulatory organizations to make similar amendments to their rules.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file 6 copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be

available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-27 and should be submitted by December 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Johathan G. Katz,**

*Secretary.*

[FR Doc. 99-31783 Filed 12-7-99; 8:45 am]

**BILLING CODE 8010-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42187; File No. SR-CBOE-99-58]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Adopt a Stated Policy that Clarifies the Maintenance Rules Governing the Replacement of Component Stocks in the Dow Jones High Yield Select Ten Index**

November 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 28, 1999, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange seeks to adopt a stated policy that clarifies the maintenance rules governing the replacement of component stocks in the Dow Jones High Yield Select Ten Index ("Index"). The Exchange currently lists and trades option on the Index.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### **1. Purpose**

In December 1997, the Commission approved a CBOE proposal to list and trade options on the Index ("Index Options Filing").<sup>3</sup> The Index is comprised of the ten highest yielding stocks in the Dow Jones Industrial Average ("DJIA"), as determined at the end of each calendar year.

As part of the Index Options Filing, the Exchange represented that if it became necessary to remove a component from the Index the component would be replaced by the highest yielding DJIA component stock not already included in the Index. In making this representation, the Exchange intended to specify the action it would take if the shares of an Index component company became unavailable for trading due to a corporate action (e.g., takeover or merger) or bankruptcy. However, the Exchange did not address situations where a company is removed from the DJIA for discretionary reasons, but its outstanding shares nevertheless remain available for trading.

The recent changes to the DJIA components, which resulted in the removal of four Index components from the DJIA, highlighted an ambiguity in CBOE's existing rules that govern the replacement of component stocks in the Index. Specifically, if an Index component is removed from the DJIA during the calendar year for discretionary reasons, must that Index component be immediately replaced, or may the component remain in the Index until the Index is reconstituted at the end of the calendar year? The Exchange believes that this proposed rule change will help clarify the maintenance

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> See Securities Exchange Act Release No. 39453 (Dec. 16, 1997), 62 FR 67101 (Dec. 23, 1997).

standards governing the composition of the Index, and is necessary because the Index Options Filing did not explain what action the Exchange might take in the event that discretionary changes were made to the DJIA.

The "Dogs of the Dow" investment strategy, upon which the Index is based, generally requires that the portfolio of ten stocks selected from DJIA at the beginning of a calendar year be held for the entire year, even if certain of those ten stocks are removed from the DJIA before the end of the year. The Exchange represented that mutual funds employing the Dogs of the Dow investment strategy indicated that they will leave their ten stock portfolios unchanged through the end of 1999. Moreover, market participants have informed the Exchange that they expect the composition of the Index to remain unchanged despite the recent DJIA component changes.

In the Index Options Filing, the Exchange stated that the Index would be reconstituted annually using the ten highest yielding stocks in the DJIA, as determined at the end of each calendar year. From the time it first listed options on the Index, the Exchange did not intend to revise the Index before year end if discretionary changes were made to the DJIA components. Therefore, the Exchange seeks to adopt the stated policy specifying that Index components removed from the DJIA during the calendar year for discretionary reasons will not be replaced in the Index until the Index is reconstituted at year end.

The Exchange believes that it is in the best interest of investors for the Exchange to act consistently with the investment community at-large in applying the Dogs of the Dow investment strategy to determine the Index portfolio. Thus, the Exchange did not revise the composition of the Index when the DJIA component changes took effect on November 1, 1999. The four DJIA components that were replaced (Chevron, Goodyear Tire & Rubber, Sears Roebuck, and Union Carbide) will remain in the Index until the Index is reconstituted after the end of 1999.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>4</sup> in that it promotes just and equitable principles of trade, and removes impediments to and perfects the mechanisms of a free and open market. The Exchange further believes that clarification of the maintenance standards governing the

Index will help provide for fair and orderly maintenance of the Index.<sup>5</sup>

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(1) thereunder.<sup>7</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

<sup>5</sup> In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

Section, Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-99-58 and should be submitted by December 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 99-31784 Filed 12-7-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42189; File No. SR-CHX-99-12]

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Inc. To Modify the Recommended Fine Schedule for the Submission of Late Financial and Operational Reports

December 1, 1999.

## I. Introduction

On August 30, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend to recommended fine schedule for the submission of late financial and operational reports. The proposal was amended on October 5, 1999.<sup>3</sup> Notice of the proposed rule change appeared in the **Federal Register** on October 25, 1999.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

The Exchange proposes to change the fine schedule applicable for violations of Exchange Article XI, Rule 4, regarding the submission of late financial and operational reports. The failure to file required financial and operational reports in a timely manner subjects members to a sanction under

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Angelo Evangelo, Senior Attorney, Market Regulation, CHX, to John Roeser, Attorney, Division of Market Regulation, Commission, dated October 1, 1999 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 42025 (October 18, 1999), 64 FR 25091.

<sup>4</sup> 15 U.S.C. 78f(b)(4).

the Exchange's Minor Rule Violation Plan ("MRVP" or "Plan").<sup>5</sup> Currently, the Minor Rule Violation Panel ("Panel") imposes late filing charges according to the following fine schedule.<sup>6</sup>

Days late	Amount
1-30 .....	\$100
31-60 .....	200
61-90 .....	400

The Exchange is now proposing to subject the late filing violations to the standard recommended fine schedule applicable to most other violations governed by the Plan. The standard recommended fine schedule imposes a \$100 fine for the first violation within a rolling twelve month period and a \$500 fine and \$1000 fine for the second and third such violations.

Unlike the current fine schedule, the proposed fine schedule would not expressly increase fines based on the number of days a particular report was filed late. However, the Exchange expects the Panel to exercise its discretion to enhance sanctions proportionally for reports that are more or less significantly overdue.<sup>7</sup>

### III. Discussion

1After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission believes that the proposal is consistent with Sections 6(b)(6)<sup>9</sup> and 6(b)(7)<sup>10</sup> of the Act. The proposal is consistent with the requirements of Sections 6(b)(6) and 6(b)(7) in that it provides fair procedures and guidelines that enable

the Exchange to appropriately discipline its members and persons associated with members for violations of the rules of the exchange.

The Commission notes particularly that the fine schedule under the Plan is merely a recommended fine schedule, and that fines of more or less than the recommended fines, up to a maximum of \$2500, may be imposed in appropriate circumstances.<sup>11</sup> The Commission expects the Panel to exercise its discretion to deviate from the Plan's recommended fine schedule in determining fine amounts, as appropriate. Further, the Commission expects the Exchange to continue to resolve more serious violations of the rules through use of its formal disciplinary procedures, such as in the case of an egregious violation or a habitual offender.

### IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(6) and 6(b)(7) of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CHX-99-12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42184; File No. SR-NYSE-99-40]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Amending Exchange Rule 123B To Prohibit Specialists From Charging Commissions on SuperDot Orders

November 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

<sup>1</sup> See Approval Order, *supra* note 5.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

notice is hereby given that on October 4, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change. The Exchange filed Amendment No. 1 on November 17, 1999<sup>3</sup> and Amendment No. 2 on November 29, 1999.<sup>4</sup> The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change for a 90-day pilot to expire on February 26, 2000.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes three amendments to Exchange Rule 123B. The first relates to commission-free execution of orders received by specialists through the SuperDOT System pursuant to Rule 123B(b)(1); the second sets forth the Exchange's policy under Rule 123B(b)(3) with respect to the timeframe in which specialists must issue an execution report for stopped orders; and the third clarifies the treatment of canceled and replaced orders. The text of the proposed rule change is available at the Exchange and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>3</sup> In Amendment No. 1 the Exchange increased the timeframe for commission-free orders executed through the Exchange's SuperDOT System from two minutes to five minutes. See letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 16, 1999.

<sup>4</sup> In Amendment No. 2, the Exchange requested that the Commission approve the proposal on a pilot basis for 90 days. See letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Richard Strasser, Assistant Director, Division, Commission, dated November 29, 1999.

<sup>5</sup> On May 30, 1996 the Commission approved a proposed rule change that established the Exchange's MRVP. See Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) ("Approval Order").

<sup>6</sup> This fine schedule is also set forth under Exchange Article XI, Rule 4, Interpretation and Policy .02, which will be similarly amended to eliminate the fine schedule.

<sup>7</sup> See Amendment No. 1, *supra* note 3.

<sup>8</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> Section 6(b)(6) requires the Commission to determine that the rules of the exchange provide that its members and persons associated with members shall be appropriately disciplined for violating the federal securities laws or the rules of the exchange by fine or other fitting sanction. 15 U.S.C. 78f(b)(6).

<sup>10</sup> Section 6(b)(7) requires the Commission to determine that the rules of the exchange provide a fair procedure for disciplining its members and persons associated with members. 15 U.S.C. 78f(b)(7).



*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes the following three amendments to Rule 123B.

**Commission-Free Execution.** Under Exchange Rule 123B(b)(1), specialists may not charge floor brokerage (*i.e.*, a commission imposed on exchange floor brokers) for executing market and marketable limit orders<sup>5</sup> received by means of the Exchange's automated order routing system known as SuperDOT. The Exchange proposes to amend Rule 123B and add .10 in the Supplementary Material to the Rule to extend the no commission policy to all orders received by specialists via SuperDOT that are executed within five minutes of receipt. This proposal would extend the commission-free execution to include limit orders that are not marketable at the time of receipt by the specialist but that are executed within the five-minute timeframe. The Rule will be amended to eliminate reference to "market" and "marketable limit orders" since all orders received through SuperDOT will be eligible for commission-free execution. The provision allowing the specialist to charge a commission on orders to sell short is also being eliminated.

**Execution of Guaranteed Orders.** Orders received by specialists via SuperDOT must be executed in accordance with Exchange auction market procedures. Specialists must expose system orders to the trading crowd, and system orders are deemed to be "held" orders. A specialist may be deemed to have "missed the market" if any such order is not executed against prevailing contra side interest in the market at the time the order is received.<sup>6</sup>

Exchange specialists may "stop" and order in an attempt to better the price that order would receive in the current market. Under Exchange Rule 116, a stop by the specialist at a specific price guarantees that the order will receive that price if the specialist is unable to improve it.<sup>7</sup>

<sup>5</sup> A marketable limit order is defined as an order with a limit price which is at or better than the prevailing quotation at the time the order is received by the specialist. See Exchange Rule 123B(b)(1).

<sup>6</sup> If a specialist has "missed the market" and the order is executed outside of the five-minute timeframe, the specialist will not be allowed to charge floor brokerage. Telephone conversation between Don Siemer, Director, Market Surveillance, Exchange, and Marc McKayle, Attorney, Division, Commission, on October 20, 1999.

<sup>7</sup> For orders that are stopped within the five-minute timeframe from receipt but executed outside

Exchange Rule 123B(b)(3) provides that the Exchange's SuperDOT system will issue a report of execution at the stop price if the specialist has not done so "within such time period as the Exchange may specify from the time the stop was granted." The Exchange proposes to amend Rule 123B to specify in .10 in the Supplementary Material to the Rule that the time period after which a system-generated execution report will be issued at the stop price will be two minutes. This proposed provision should help to ensure the timely execution of orders that are stopped.

**Canceled and Replaced Orders.** The Exchange proposes to add .20 in the Supplementary Material to Rule 123B to clarify that if an order with the specialist is canceled and replaced, the replacement order is considered a new order for purposes of the Rule.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)<sup>8</sup> in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange reviewed the proposed rule change with members and organizations representing various constituencies of the Exchange. No written comments were solicited or received with respect to the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

of the five-minute timeframe from receipt, specialists will not be allowed to charge floor brokerage. As with all stopped orders, if the order is executed at a price less favorable than the stopped price, the specialist will be liable for the differences in the two prices. *Id.*

<sup>8</sup> 15 U.S.C. 78f(b)(5).

Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-99-40, and should be submitted by December 29, 1999.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

The Commission finds that the proposed pilot is consistent with the requirements of the Act.<sup>9</sup> In particular, the Commission finds the proposal is consistent with Section 6(b)(5)<sup>10</sup> of the Act. Section 6(b)(5) requires, among other things, that the rules of the exchange be designed to facilitate transactions in securities and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public.

The Commission believes that the proposed rule change, by reducing transaction costs associated with SuperDot orders, should facilitate such transactions. Also, clearly identifying the time within which an execution report must be issued for stopped orders should help to ensure that timely execution of stopped orders takes place, thereby providing for the efficient execution of orders received through the SuperDOT system. Finally, because new orders are granted specific execution rights, it is important to clearly identify what will be considered a new order for purposes of rule 123B.

In light of the cost-saving benefits that will flow to market participants entering SuperDot orders, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

*It is therefore ordered*, pursuant to 19(b)(2) of the Act,<sup>11</sup> that the proposed

<sup>9</sup> In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).



rule change (SR-NYSE-99-40) is approved through February 26, 2000.<sup>12</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 99-31781 Filed 12-7-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42195; File No. SR-OCC-99-09]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend OCC's By-Laws and Rules To Merge the Currently Separated Equity and Non-Equity Elements of the OCC's Clearing Fund

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on September 24, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises OCC's By-Laws and Rules to merge the equity and non-equity elements of the OCC's clearing fund into one clearing fund with contributions based on total margin requirements. The minimum contribution of the combined clearing fund will be \$150,000.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B),

and (C) below, of the most significant aspects of such statements.<sup>2</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to merge the currently separated equity and non-equity elements of the OCC's clearing fund, referred to in OCC's By-Laws and Rules as the "stock clearing fund" and the "non-equity securities clearing fund," into one combined clearing fund with contributions based on total margin requirements. The minimum contribution of the combined clearing fund will be \$150,000. The rule change also changes the language of Article VIII of the By-Laws and Chapter 10 of the Rules and attempts to conform the language of Article VIII, Section 5(a) more closely to that of Article VIII, Section 1, without changing the substance of those provisions.

OCC believes that for some time the division of the clearing fund into two elements has served no useful purpose. In 1982, when OCC first began clearing non-equity products, including treasury, currency, and stock index options, OCC instituted a separate non-equity element to the clearing fund to limit the impact of a member default in one product base, either equity or non-equity, on members trading only the other product base. The element of the clearing fund applicable to the product(s) involved in the default would be utilized first; only after that element was exhausted would the other element be used. Beginning in 1986, with the introduction of the Theoretical Intermarket Margin System ("TIMS") for non-equity products, some margin offsets were allowed between equity and non-equity products. Such offsets further expanded following the implementation of TIMS for equity products in 1991. The blurring of the distinction between equity and non-equity margin requirements and the integration of OCC's equity and non-equity systems in general, has reached a level such that clearing members only have a single margin requirement, which is used to determine the size of each element of the clearing fund each month.

According to OCC, almost all clearing members already contribute to both the equity and non-equity elements of the clearing fund and thus are subject to the \$75,000 minimum contribution for each element. For those members, a merger of the two elements into one combined

clearing fund would cause no aggregate change in the size of their clearing fund contribution. Five clearing members clear either only equity or only non-equity products and therefore contribute to only one element of the clearing fund. Three of these members, however, would not have their contributions affected by the proposed merger because their current activity puts their contributions well above the proposed \$150,000 minimum. Thus, the merger of the two elements into one clearing fund would not materially change the overall size of the clearing fund and would only have a minor impact on a small number of members.

Consistent with Article VIII, Section 2 of OCC's By-Laws, OCC will issue a memorandum to its clearing members at least five business days prior to the effective date of the rule change advising them of the change in the minimum contribution and advising them of their ability to withdraw from membership should they choose not to make the required clearing fund contribution.

OCC believes that the proposed rule change is consistent with Section 17A of the Act of promoting the prompt and accurate clearance and settlement of securities transactions because the rule change eliminates the unnecessary subdivision of the clearing fund.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Act

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>12</sup> The approval of the pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal permanently.

<sup>13</sup> 17 CFR 200.30-3(9)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-99-9 and should be submitted by December 29, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 99-31785 Filed 12-7-99; 8:45 am]

BILLING CODE 8010-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42193; File No. SR-PCX-99-49]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Financial Reports and Related Notices (EDGAR Rule Filing)

December 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 9, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its Rule pertaining to Financial Reports to allow for materials filed with the SEC through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system to be considered effectively filed with the Exchange. Below is the text of the proposed rule change.<sup>3</sup> Rule 3.3(t)(1).

Commentary .04.

*Material required to be filed pursuant to the Securities Exchange Act of 1934 will be considered as effectively filed with the Exchange upon filing such documents through the SEC's Electronic Data Gathering Analysis and Retrieval ("EDGAR") system, excepting Forms 8-Ks and proxy soliciting material.*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

PCX Rule 3.3(t)(1) requires that companies applying for listing on the PCX enter into agreements with the Exchange and become subject to its rules, regulations and policies applicable to listed companies. Pursuant to the listing agreement with the Exchange and the rules under the Act, each listed company is required to submit materials to be filed pursuant to the Act.<sup>4</sup>

<sup>3</sup> New language is italicized.

<sup>4</sup> Materials to be filed pursuant to the Act include Forms 8-K Current Report, 10-Q Quarterly Report, 10-K Annual Report, or other annual report forms for issuers using other than Form 10K; any proxy soliciting material; Forms 3 and 4, reports of the Company's officers, directors, and holders of more than 10% of the registered equity security; (one signed copy, except when a company having securities listed on another national securities

To relieve listed companies of the burden and costs of providing separate paper copies of their SEC filings to the Exchange, the Exchange proposes to amend its filing requirements so that a company that electronically files documents with the Commission will be deemed to have satisfied its comparable filing requirement with the PCX. Specifically, the Exchange now proposes that materials required to be filed pursuant to the Act, pursuant to PCX Rule 3.3(t)(1)(ii), except for Form 8-Ks and Preliminary Final Proxy Materials, be considered effectively filed with the Exchange upon filing such documents through the SEC's EDGAR system. The Exchange will continue to require that listed issuers manually file one copy of all Form 8-Ks and Preliminary Final Proxy Materials with the Exchange in order to be able to approximately monitor significant corporate events.

###### 2. Basis

The Exchange believes that the proposal is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and Section 6(b)(5),<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

exchange has taken advantage of SEC Regulation 240.16a-1(c) and has designated another exchange as the only exchange with which such reports are to be filed. Designating an exchange may be accomplished by filing a letter with the Securities and Exchange Commission with a copy to each exchange on which the stock is listed); and Form 144, notice of proposed sale of restricted securities (this report need be filed under SEC Regulation 230.144(h) only with the principal exchange on which the securities are listed). See PCX Rule 3.3(t)(1)(ii).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(5).

<sup>3</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-99-49 and should be submitted by December 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 99-31780 Filed 12-7-99; 8:45 am]

**BILLING CODE 8010-01-M**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42188; File No. SR-PCX-99-17]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Ticket-to-Follow Amendment to the PCX Rules on Telephones on the Options Floor

December 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 1, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On November 12, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its rules on options trading to permit Floor Brokers to immediately represent intra-floor telephonic orders in the trading crowd, with a written order ticket immediately to follow.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Michael Pierson, Director, Regulatory Policy, PCX, to John Roeser, Attorney, Division of Market Regulation, Commission, dated November 10, 1999 ("Amendment No. 1"). The text of Amendment No. 1 is incorporated into this notice.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange is proposing to modify its rules to reduce the amount of time required before intra-floor telephonic orders can be represented in the trading crowd. Currently, Options Floor Brokers are not permitted to represent orders they receive over the telephone unless and until they have prepared, from outside the trading crowd, a written, time-stamped order ticket.<sup>4</sup>

The Exchange is now proposing to adopt new PCX Rule 6.2(h)(4)(C), which will provide that a Floor Broker in a trading crowd who receives an order from a Member of Member Firm representative located on the Trading Floor may represent that order immediately in the trading crowd, provided that a written, time-stamped order ticket for that order must be taken immediately to the Floor Broker in the trading crowd.<sup>5</sup> The Exchange is also proposing to remove the following text from proposed PCX Rule 6.2(h)(4)(B): "Floor Brokers who receive telephonic orders while in the trading crowd must step outside of the trading crowd, write up an order ticket and time-stamp it before representing the order in the crowd." In addition, the Exchange is proposing to modify PCX Rule 6.67 ("Orders Required to Be in Written Form") by adding new subsection (d), which will provide that a Floor Broker may represent a telephonic order, with the ticket to follow, as provided in PCX Rule 6.2(h)(4)(C). The Exchange is also proposing to modify PCX Rule 6.85 ("Market Maker Orders Executed by Floor Brokers") by providing that PCX Rule 6.2(h)(4)(C) is an exception to the general rule that when a Floor Broker receives a verbal order from a Market Maker, or when a Floor Broker is

<sup>4</sup> See, e.g., proposed PCX Rule 6.2(h)(4)(B), published for public comment in Filing No. SR-PCX-98-30, Exchange Act Release No. 41018 (February 3, 1999), 64 FR 7681 (February 16, 1999) ("Floor Brokers who receive telephonic orders while in the trading crowd must step outside of the crowd, write up an order ticket and time stamp it before representing the order in the crowd"); See also PCX rule 6.85, Com. .03 ("when a Floor Broker receives a verbal order from a Market Maker, or when a Floor Broker is requested by a Market Maker to alter an order in his possession in any way, the Floor Broker shall immediately prepare an order ticket from outside the trading crowd and time stamp it").

<sup>5</sup> In Amendment No. 1, the Exchange modified the proposed text of PCX Rule 6.2(h)(4)(C) to provide that an order ticket for the order must be prepared and time stamped in the member firm booth before the order is transmitted telephonically to the Floor Broker in the trading crowd. See Amendment No. 1, *supra* note 3.

<sup>7</sup> 17 U.S.C. 200.30-3(a)(12).

requested by a Market Maker to alter an order in his possession in any way, the Floor Broker shall immediately prepare an order ticket from outside the trading crowd and time-stamp it. Accordingly, Floor Brokers who receive intra-floor telephonic orders from Market Makers will be permitted to represent those orders immediately, with the ticket immediately to follow.<sup>6</sup>

The Exchange notes that pursuant to Options Floor Procedure Advice ("OFPA") F-5, hand signals may be used to increase or decrease the size of an order, to change the order's limit, to cancel an order or to activate a market order, as long as the cancellation or change to the order is "relayed to the Floor Broker in a time-stamped, written form immediately thereafter." Although OFPA F-5 is rarely used on the PCX, the Exchange is proposing, as a matter of consistency, to eliminate the following text from OFPA F-5: "Any changes to an order must be documented in writing outside of the crowd and the ticket time-stamped, before the revised order may be represented."

The Exchange believes that the rule change is necessary to assure that, as more and more option orders are transmitted and represented electronically on the PCX, manual orders represented by Floor Brokers are not placed at a competitive disadvantage. In that regard, the Exchange notes that pursuant to PCX Rule 6.88 (Exchange-sponsored Hand-Held Terminals for Floor Brokers)<sup>7</sup> and 6.89 (Proprietary Brokerage Order Routing Terminals),<sup>8</sup> PCX member firms currently may send orders electronically from off the Trading Floor directly to a Floor Broker's hand-held terminal located in the trading crowd on the Options Floor.

The Exchange believes that implementation of the proposed rule change will not diminish the ability of the Exchange to conduct adequate surveillance for rule violations. The Exchange believes that the continuing requirement for floor members to prepare a written, time-stamped order ticket, which will document the time of order entry, will satisfy the Exchange's audit trail requirements in that regard. Further, the execution time of the order will otherwise be documented by the contra party or parties to the trade<sup>9</sup> as

well as by the price Report Terminal Operator (a PCX employee).

## 2. Basis

The Exchange believes that this proposal is consistent with Section 6(b)<sup>10</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-99-17 and should be submitted by December 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 99-31782 Filed 12-7-99; 8:45 am]

BILLING CODE 8010-01-M

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed priorities; request for public comment.

**SUMMARY:** As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission has preliminarily identified certain priorities as the focus of its policy development work, including possible amendments to guidelines, policy statements and commentary, for the amendment cycle ending May 1, 2000. The Commission has only recently been reconstituted and, due to the constraints of an abbreviated amendment cycle, the Commission proposes to place on its agenda only those items the Commission hopes it may be able to conclude by its statutory deadline of May 1.

**DATES:** Public comment should be received on or before January 7, 2000.

**ADDRESSES:** Send comments to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2-500 South, Washington, DC 20002-8002, Attention: Public Information-Priorities Comment.

<sup>6</sup> Under Proposed PCX Rule 6.2(h)(4), Floor Brokers are not permitted to communicate directly with persons located off the Trading Floor. See File No. SR-PCX-98-30.

<sup>7</sup> See Securities Exchange Act Release No. 39970 (May 7, 1998), 63 FR 26662 (May 13, 1998).

<sup>8</sup> See Securities Exchange Act Release No. 40577 (October 20, 1998), 63 FR 57721 (October 28, 1998).

<sup>9</sup> See PCX Rule 6.69 and OFPA G-12.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

**FOR FURTHER INFORMATION CONTACT:**

Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** Due to a constrained schedule for developing and promulgating amendments in the current amendment cycle, the Commission has determined it necessary to focus and limit its policy development work for the current amendment cycle to policy work it believes it may reasonably accomplish by May 1, 2000. Accordingly, the Commission has limited its current policy development priorities principally to the following areas: (i) Implementation of legislative directives and other high priority crime legislation enacted by the 105th Congress for which guideline amendments were not developed or finalized by the previous Commission; and (ii) Resolution of a limited number of high priority "circuit conflicts" in guideline interpretation, with the goal of enhancing the consistency with which the guidelines are applied. While the Commission intends to address these priority issues promptly, it recognizes that the tight time constraints and possible complexities of several of the issues may not permit completion of all work to the Commission's satisfaction by the statutory deadline of May 1. The Commission plans to address any unfinished policy development work from this agenda during the next amendment cycle unless Congress enacts legislation providing the Commission with emergency amendment authority, which would enable the Commission to submit guideline amendments after the May 1 statutory deadline.

The specific policy development issues that the Commission hopes to address in this cycle are as follows—

**I. Legislative Directives**

The Commission has identified the implementation of the following directives as a priority for this amendment cycle:

(A) The No Electronic Theft (NET) Act of 1997—Congress directed the Commission, under emergency amendment authority, to ensure that (1) the guideline penalties for intellectual property offenses are sufficiently stringent to deter those crimes; and (2) the guidelines pertaining to intellectual property offenses provide for consideration of the retail value and quantity of infringed items.

(B) The Telemarketing Fraud Prevention Act of 1998—Congress directed the Commission, under emergency authority, to provide (1) Substantially increased penalties for

persons convicted of telemarketing offenses; (2) An additional sentencing enhancement if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts; and (3) An additional sentencing enhancement for cases in which a large number of vulnerable victims are affected by a fraudulent scheme or schemes. The Commission promulgated emergency amendments in September 1998 in response to this directive, but they must be re-promulgated in the coming amendment cycle to be made permanent.

(C) The Wireless Telephone Protection Act of 1998—Congress directed the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for offenses involving the fraudulent cloning of wireless telephones.

(D) The Identity Theft and Assumption Deterrence Act of 1998—Congress directed the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for each offense under 18 U.S.C. 1028 (fraud in connection with identification documents).

(E) The Protection of Children from Sexual Predators Act of 1998—Congress directed the Commission to (1) Provide a sentencing enhancement for offenses relating to the transportation of individuals for illegal sexual activity; (2) Provide a sentencing enhancement if the defendant used a computer in connection with a sexual offense against a minor; (3) Provide a sentencing enhancement if the defendant knowingly misrepresented the defendant's identity in connection with a sexual offense against a minor; (4) Increase the penalties in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor; and (5) Amend the guidelines to clarify that the term "distribution of pornography" in the guidelines relating to distribution of child pornography applies to distribution for monetary remuneration or for a non-pecuniary interest.

**II. Other High Priority Crime Legislation**

The Commission would like to consider amendments to the sentencing guidelines to implement the following additional high priority crime legislation:

(A) The Methamphetamine Trafficking Control Act of 1998—This Act does not contain a directive, but it increased the penalties for manufacturing, importing, or trafficking in methamphetamine by reducing by one-half the quantity of

methamphetamine required to trigger the various mandatory minimum sentences in the drug statutes.

(B) Firearms Legislation—In Public Law 105-386, Congress amended 18 U.S.C. 924(c) to (1) Create a tiered system of sentencing enhancement ranges, each with a mandatory minimum and presumed life maximum, in cases in which a firearm is involved in a crime of violence or drug trafficking offense (the pertinent minimum sentence being dependent on whether the firearm was possessed, brandished, or discharged); (2) Change the mandatory minimum for second or subsequent convictions under § 924(c) from 20 to 25 years; and (3) broadly define the term "brandish."

In Public Law 105-277 (section 121 of the General Provisions), Congress amended 18 U.S.C. 922 to prohibit an alien who is lawfully present in the United States under a non-immigrant visa from possessing or otherwise being involved in a firearms offense.

**III. Circuit Conflicts**

As it has in the past, the Commission proposes to resolve a number of conflicts among the circuit courts on sentencing guideline issues. See *Braxton v. United States*, 500 U.S. 344 (1991). The Commission has begun working with the Criminal Law Committee of the Judicial Conference, the United States Department of Justice, and other interested participants in the federal criminal justice system to identify and resolve high priority circuit conflict issues.

The Commission also expects to review any additional crime legislation enacted during the first session of the 106th Congress for matters requiring prompt Commission response. Finally, the Commission expects to consider several minor technical or conforming amendments necessary for proper operation of the sentencing guideline system.

The Commission invites public comment on these proposed priorities.

**Authority:** 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

**Diana E. Murphy,**  
Chair.

[FR Doc. 99-31755 Filed 12-7-99; 8:45 am]

**BILLING CODE 2210-40-P**

## DEPARTMENT OF STATE

[Public Notice 3168]

**Culturally Significant Objects Imported for Exhibition Determinations: "Salvador Dali: Optical Illusions"**

AGENCY: Department of State.

ACTION: Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Salvador Dali: Optical Illusions," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the The Wadsworth Atheneum, Hartford, Connecticut from January 20 to March 26, 2000, and the Hirshhorn Museum and Sculpture Garden, Washington, D.C., from April 19 to June 18, 2000, and is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619-6981). The address is U.S. Department of State, SA-44; 301-4th Street, S.W., Room 700, Washington, D.C. 20547-0001.

Dated: November 24, 1999.

**William B. Bader,***Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 99-31793 Filed 12-7-99; 8:45 am]

BILLING CODE 4710-08-P

## DEPARTMENT OF TRANSPORTATION

**National Highway Traffic Safety Administration**

[Docket No. NHTSA-99-6545]

RIN 2127-AF54

**Federal Motor Vehicle Safety Standards; Side Impact Protection; Review: Side Impact Protection, Passenger Cars; Evaluation Report**

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

**SUMMARY:** This notice announces NHTSA's publication of a Technical Report reviewing and evaluating its existing Safety Standard 214, Side Impact Protection. The report's title is Evaluation of FMVSS 214—Side Impact Protection: Dynamic Performance Requirement; Phase 1: Correlation of TTI(d) with Fatality Risk in Actual Side Impact Collisions of Model Year 1981–1993 Passenger Cars; Plan for Phase 2: Effect of FMVSS 214 and Correlation of TTI(d) with Actual Fatality Risk in Model Year 1992–2000 Passenger Cars.

**DATES:** Comments must be received no later than April 6, 2000.

**ADDRESSES:** *Report:* You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Publications Ordering and Distribution Services (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. The executive summary of the report is available on the Internet for viewing on line at [www.nhtsa.dot.gov/cars/rules/regrev/evaluate/809004.html](http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/809004.html). The full report is available on the Internet in PDF format at [www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809004.pdf](http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809004.pdf).

*Comments:* All comments should refer to the Docket number of this notice. You may submit your comments in writing to: U. S. Department of Transportation Docket Management, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

You may call Docket Management at 202-366-9324 and visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Kahane, Chief, Evaluation

Division, NPP-22, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202-366-2560. FAX: 202-366-2559. E-mail: [ckahane@nhtsa.dot.gov](mailto:ckahane@nhtsa.dot.gov).

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA web site at <http://www.nhtsa.dot.gov> and click "Regulations & Standards" underneath "Car Safety" on the home page; then click "Regulatory Evaluation" on the "Regulations & Standards" page.

**SUPPLEMENTARY INFORMATION:**

Safety Standard 214 (49 CFR 571.214) was amended in 1990 to assure occupant protection in a dynamic test that simulates a severe right-angle collision (55 FR 45752). It was phased into passenger cars by requiring percentages of cars manufactured during September 1, 1993–August 30, 1996 and all cars manufactured on or after September 1, 1996 for sale in the United States to meet the test. The purpose of Safety Standard 214 is to reduce fatalities and injuries by limiting the force levels on the occupant's thorax and pelvis. The test involves a Moving Deformable Barrier hitting the side of a vehicle. Side Impact Dummies are seated adjacent to the impact point. A Thoracic Trauma Index, TTI(d) and pelvic g's are measured on the dummies.

As required by the Government Performance and Results Act of 1993 and Executive Order 12866 (58 FR 51735), NHTSA reviews existing regulations to determine if they are achieving policy goals. The agency is evaluating the effectiveness, benefits and costs of side impact protection for new passenger cars in two phases, as crash data become available. Phase 1, completed in this report, is a statistical analysis of relationships between front-seat TTI(d) and fatality risk in actual side impacts on the highway, in baseline, pre-standard vehicles of model years 1981–93, based on Fatality Analysis Reporting System (FARS) data from late 1980 through early 1998. These baseline-tested make-models have been on the road long enough to accumulate a sufficient crash data base for meaningful statistical analyses.

The principal finding of Phase 1 is a statistically significant association of TTI(d) with side-impact fatality risk in passenger cars of model years 1981–93: the lower the TTI(d), the lower the fatality risk. The observed relationship is stronger, however, in 2-door cars than in 4-door cars. Each reduction of TTI(d)

by one unit is associated with an estimated 0.927 percent reduction of fatality risk in side impacts of 2-door cars. The association between TTI(d) and fatality risk in the corresponding analysis of baseline 4-door cars was not statistically significant. In 2-door cars, TTI(d) has improved from an average of 110 in baseline, model year 1981–90 cars to an average of 74 in model year 1997. In 4-door cars, average TTI(d) has improved from 80 in 1981–90 to 65 in 1997.

The report also presents a plan for Phase 2, a proposed statistical comparison of side-impact fatality and injury rates in cars produced immediately after vs. immediately before the implementation of FMVSS 214. Adequate crash data on those make-models are likely to accumulate by 2001.

#### **How Can I Influence NHTSA's Thinking on This Evaluation?**

NHTSA welcomes public review of the technical report and invites the reviewers to submit comments about the data and the statistical methods used in the Phase 1 analyses or proposed for Phase 2. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

The agency is especially interested in learning of any additional data or information on the following topics:

- Why do the Phase 1 analyses show a stronger correlation of TTI(d) and fatality risk in 2-door cars than in 4-door cars? Is it an artifact of the data or the statistical method, or is there a physical explanation?
- Have baseline crash tests conforming to the FMVSS 214 configuration been run for any other unmodified pre-FMVSS 214 cars?
- The Phase 2 plan (Chapter 8 and Appendix B of the report) gives chronologies of the side-impact test results and side-component modifications of 52 make-model groups of passenger cars. Please correct any omissions or inaccuracies in the chronologies. Specifically, are TTI(d) scores available for any of the make-model-year-body style combinations described as "TTI(d) unknown" in Appendix B?
- Should any of the 52 make-model groups be excluded from the Phase 2 analysis because, for example, the side-structure upgrade coincided with some other redesign that greatly changed crash rates?

#### **How Do I Prepare and Submit Comments?**

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–99–6545) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U. S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System website at <http://dms.dot.gov> and click on "Help & Information" or "Help/Info" to obtain instructions.

We also request, but do not require you to send a copy to Charles J. Kahane, Chief, Evaluation Division, NPP–22, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590 (alternatively, FAX to 202–366–2559 or e-mail to [ckahane@nhtsa.dot.gov](mailto:ckahane@nhtsa.dot.gov)). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

#### **How Can I be Sure That My Comments Were Received?**

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### **How Do I Submit Confidential Business Information?**

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW, Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies of from which you have deleted the claimed confidential business information to

Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

#### **Will the Agency Consider Late Comments?**

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

#### **How Can I Read the Comments Submitted by Other People?**

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW, Washington, DC from 10:00 a.m. to 5:00 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

- (1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov>).
- (2) On that page, click on "search."
- (3) On the next page (<http://dms.dot.gov/search/>) type in the four-digit Docket number shown at the beginning of this Notice (6545). Click on "search."
- (4) On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

**Authority:** 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

**William H. Walsh,**

*Associate Administrator for Plans and Policy.*

[FR Doc. 99–31754 Filed 12–7–99; 8:45 am]

**BILLING CODE 4910–59–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Surface Transportation Board**

#### **Notice of Public Information Collection Submitted to the Office of Management and Budget for Review.**

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Requesting approval of revision of a currently approved collection.



**SUMMARY:** The Surface Transportation Board submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. Chapter 35).

*Title:* Annual Waybill Compliance Survey.

*Office:* Office of Economics, Environmental Analysis, and Administration.

*OMB Form No.:* OMB 2140-0010.

*Frequency:* Annually.

*No. of Respondents:* 600.

*Total Burden Hours:* 300.

**DATES:** Persons wishing to comment on this information collection should submit comments by January 10, 2000.

**ADDRESSES:** Direct all comments to Case Control, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423. When submitting comments refer to the title of the information collection.

**FOR FURTHER INFORMATION CONTACT:**

Harold J. Warren, 202 565-1433. Requests for copies of the information collection may be obtained by contacting Ellen R. Keys (202) 565-1654.

**SUPPLEMENTARY INFORMATION:** The Surface Transportation Board is, by statute, responsible for the economic regulation of railroads operating in the United States. The Carload Waybill Sample is collected to support the Board's regulatory activities. The Annual Waybill Compliance Survey is required to be filed by all railroads operating in the United States pursuant to authority in Title 49 U.S.C. Public Law 1145, 11144, 11901, 11326(b), 11327, and 11328(b) of the ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (1995). Our regulations at 49 CFR 1244.2(f) specifically require the survey to be filed annually.

Dated: December 3, 1999.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 99-31799 Filed 12-7-99; 8:45 am]

**BILLING CODE 4915-00-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8569

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8569, Availability Statement.

**DATES:** Written comments should be received on or before February 7, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622-6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Availability Statement.

*OMB Number:* 1545-0973.

*Form Number:* 8569.

*Abstract:* This form is used to collect information from applicants for the Senior Executive Service Candidate Development Program and other executive positions. The form states an applicant's minimum area of availability and is used for future job placement consideration.

*Current Actions:* There are no changes being made to Form 8569 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and the Federal Government.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 84.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 30, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99-31800 Filed 12-7-99; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Revenue Procedure 96-52

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96-52, Acceptance Agents (IRB 1996-48).

**DATES:** Written comments should be received on or before February 7, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622-6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.



**SUPPLEMENTARY INFORMATION:**

*Title:* Acceptance Agents.

*OMB Number:* 1545-1499.

*Revenue Procedure Number:* Revenue Procedure 96-52.

*Abstract:* Revenue Procedure 96-52 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with the Internal Revenue Service.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal governments.

*Estimated Number of Respondents:* 12,825.

*Estimated Time Per Respondent:* 3 hours, 12 minutes.

*Estimated Total Annual Burden Hours:* 41,006.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 30, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99-31801 Filed 12-7-99; 8:45 am]

**BILLING CODE 4830-01-U**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request For Revenue Procedure 96-53**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96-53, Section 482—Allocations Between Related Parties.

**DATES:** Written comments should be received on or before February 7, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Sec. 482—Allocations Between Related Parties

*OMB Numbers:* 1545-1503.

*Revenue Procedure Number:* Revenue Procedure 96-53.

*Abstract:* The information requested in this revenue procedure is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such

applications and negotiate agreements, and to verify compliance with the agreements and whether the agreements require modification.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 160.

*Estimated Time Per Respondent:* 32 hours, 49 minutes.

*Estimated Total Annual Burden Hours:* 5,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 24, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99-31802 Filed 12-7-99; 8:45 am]

**BILLING CODE 4830-01-U**

Estimated  
Part 124  
Total

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Wednesday  
December 8, 1999

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## Part II

# Environmental Protection Agency

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40 CFR Parts 9, 122, 123, and 124  
National Pollutant Discharge Elimination  
System—Regulations for Revision of the  
Water Pollution Control Program  
Addressing Storm Water Discharges;  
Final Rule

Report to Congress on the Phase II  
Storm Water Regulations; Notice

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 9, 122, 123, and 124**

[FRL—6470—8]

RIN 2040—AC82

**National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** Today's regulations (Phase II) expand the existing National Pollutant Discharge Elimination System (NPDES) storm water program (Phase I) to address storm water discharges from small municipal separate storm sewer systems (MS4s) (those serving less than 100,000 persons) and construction sites that disturb one to five acres. Although these sources are automatically designated by today's rule, the rule allows for the exclusion of certain sources from the national program based on a demonstration of the lack of impact on water quality, as well as the inclusion of others based on a higher likelihood of localized adverse impact on water quality. Today's regulations also exclude from the NPDES program storm water discharges from industrial facilities that have "no exposure" of industrial activities or materials to storm water. Finally, today's rule extends from August 7, 2001 until March 10, 2003 the deadline by which certain industrial facilities owned by small MS4s must obtain coverage under an NPDES permit. This rule establishes a cost-effective, flexible approach for reducing environmental harm by storm water discharges from many point sources of storm water that are currently unregulated.

EPA believes that the implementation of the six minimum measures identified for small MS4s should significantly reduce pollutants in urban storm water compared to existing levels in a cost-effective manner. Similarly, EPA believes that implementation of Best Management Practices (BMP) controls at small construction sites will also result in a significant reduction in pollutant discharges and an improvement in surface water quality. EPA believes this rule will result in monetized financial, recreational and health benefits, as well as benefits that EPA has been unable to monetize. Expected benefits include reduced scouring and erosion of streambeds, improved aesthetic quality

of waters, reduced eutrophication of aquatic systems, benefit to wildlife and endangered and threatened species, tourism benefits, biodiversity benefits and reduced costs for siting reservoirs. In addition, the costs of industrial storm water controls will decrease due to the exclusion of storm water discharges from facilities where there is "no exposure" of storm water to industrial activities and materials.

**DATES:** This regulation is effective on February 7, 2000. The incorporation by reference of the rainfall erosivity factor publication listed in the rule is approved by the Director of the Federal Register as of February 7, 2000. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. Eastern Standard Time, on December 22, 1999 as provided in 40 CFR 23.2.

**ADDRESSES:** The complete administrative record for the final rule and the ICR have been established under docket numbers W-97-12 (rule) and W-97-15 (ICR), and includes supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. A reasonable fee may be charged for copying. The record is available for inspection and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EPA, East Tower Basement, 401 M Street, SW, Washington, DC. For access to docket materials, please call 202/260-3027 to schedule an appointment.

**FOR FURTHER INFORMATION CONTACT:** George Utting, Office of Wastewater Management, Environmental Protection Agency, Mail Code 4203, 401 M Street, SW, Washington, DC 20460; (202) 260-5816; sw2@epa.gov.

**SUPPLEMENTARY INFORMATION:** Entities potentially regulated by this action include:

Category	Examples of regulated entities
Federal, State, Tribal, and Local Governments.	Operators of small separate storm sewer systems, industrial facilities that discharge storm water associated with industrial activity or construction activity disturbing 1 to 5 acres.
Industry .....	Operators of industrial facilities that discharge storm water associated with industrial activity.
Construction Activity.	Operators of construction activity disturbing 1 to 5 acres.

This table is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or company is regulated by this action, you should carefully examine the applicability criteria in §§ 122.26(b), 122.31, 122.32, and 123.35 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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    - G. Executive Order 13045
    - H. Executive Order 13084
    - I. Congressional Review Act

## I. Background

### A. Proposed Rule and Pre-Proposal Outreach

On January 9, 1998 (63 FR 1536), EPA proposed to expand the National Pollutant Discharge Elimination System (NPDES) storm water program to include storm water discharges from municipal separate storm sewer systems (MS4s) and construction sites that were smaller than those previously included in the program. The proposal also addressed industrial sources that have "no exposure" of industrial activities and materials to storm water. Today, EPA is promulgating a final rule to implement most of the proposed revisions with minor changes based on public comments received on the proposal. Today's final rule also extends the deadline by which certain industrial facilities operated by municipalities of less than 100,000 population must be covered by a NPDES permit; the

deadline is changed from August 7, 2001 until March 10, 2003.

In 1972, Congress amended the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (CWA)) to prohibit the discharge of any pollutant to waters of the United States from a point source unless the discharge is authorized by an NPDES permit. The NPDES program is a program designed to track point sources and require the implementation of the controls necessary to minimize the discharge of pollutants. Initial efforts to improve water quality under the NPDES program primarily focused on reducing pollutants in industrial process wastewater and municipal sewage. These discharge sources were easily identified as responsible for poor, often drastically degraded, water quality conditions.

As pollution control measures for industrial process wastewater and municipal sewage were implemented and refined, it became increasingly evident that more diffuse sources of water pollution were also significant causes of water quality impairment. Specifically, storm water runoff draining large surface areas, such as agricultural and urban land, was found to be a major cause of water quality impairment, including the nonattainment of designated beneficial uses.

In 1987, Congress amended the CWA to require implementation, in two phases, of a comprehensive national program for addressing storm water discharges. The first phase of the program, commonly referred to as "Phase I," was promulgated on November 16, 1990 (55 FR 47990). Phase I requires NPDES permits for storm water discharge from a large number of priority sources including municipal separate storm sewer systems ("MS4s") generally serving populations of 100,000 or more and several categories of industrial activity, including construction sites that disturb five or more acres of land.

Today's rule, which is the second phase of the storm water program, expands the existing program to include discharges of storm water from smaller municipalities in urbanized areas and from construction sites that disturb between one and five acres of land. Today's rule allows certain sources to be excluded from the national program based on a demonstrable lack of impact on water quality. The rule also allows other sources not automatically regulated on a national basis to be designated for inclusion based on increased likelihood for localized adverse impact on water quality.

Today's rule also conditionally excludes storm water discharges from industrial facilities that have "no exposure" of industrial activities or materials to storm water. Today's rule and the effort that led to its development are commonly referred to as "Phase II." On August 7, 1995, EPA promulgated a final rule that required facilities to be regulated under Phase II to apply for a NPDES permit by August 7, 2001, unless the NPDES permitting authority designates them as requiring a permit by an earlier date. (60 FR 40230). That rule is referred to as "the Interim Phase II Rule." Today's rule replaces the Interim Phase II rule.

EPA performed extensive outreach and worked with a variety of stakeholders prior to proposing today's rule. On September 9, 1992, EPA published a notice requesting information and public comment on how to prepare regulations under CWA section 402(p)(6) (see 57 FR 41344). The notice identified three sets of issues associated with developing new NPDES storm water regulations: (1) How should EPA identify unregulated sources of storm water to protect water quality, (2) what types of control strategies should EPA develop for these sources, and (3) what are appropriate deadlines for implementing new requirements. The notice recognized that potential sources for coverage under the section 402(p)(6) regulations would fall into two main categories: municipal separate storm sewer systems and individual (commercial and residential) sources. EPA received more than 130 comments on the September 9, 1992, notice. For further discussion of the comments received, see *Storm Water Discharges Potentially Addressed by Phase II of the National Pollutant Discharge Elimination System: Report to Congress* (EPA, 1995a), pp. 1–21 to 1–22, and Appendix J (which provides a detailed summary of the comments received as they relate to the specific issues raised in the notice).

In early 1993, the Rensselaerville Institute and EPA held public and expert meetings to assist in developing and analyzing options for identifying unregulated sources and possible controls. The report on the 1993 meetings identified two options that were favored by the various groups that participated. One option was a program that allowed States to select sources to be controlled in a manner consistent with criteria developed by EPA. A second option was a tiered approach under which EPA would select high priority sources for control by NPDES permits and States would select other sources for control under a State water

quality program other than the NPDES program. For additional details see the "Report on the EPA Storm Water Management Program (Rensselaerville Study)," Appendix I of *Storm Water Discharges Potentially Addressed by Phase II of the National Pollutant Discharge Elimination System: Report to Congress* (EPA, 1995a).

EPA also conducted outreach with representatives of small entities in conjunction with the convening of a Small Business Advocacy Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA). This process is discussed in section IV.E of today's preamble. For additional background see the discussion in the preamble to the proposal for today's rule.

To assist EPA by providing advice and recommendations regarding the urban municipal wet weather water pollution control program, EPA established the Urban Wet Weather Flows Federal Advisory Committee (hereinafter, "FACA Committee") under the Federal Advisory Committee Act (FACA). The Office of Management and Budget approved the charter for the FACA Committee on March 10, 1995. The FACA Committee provided a forum for identifying and addressing issues associated with water quality impacts from storm water sources.

The FACA Committee established two subcommittees: the Storm Water Phase II FACA Subcommittee and the Sanitary Sewer Overflows (SSOs) FACA Subcommittee. Consistent with the requirements of FACA, the membership of both the FACA Committee and the subcommittees was balanced among EPA's various outside stakeholder interests, including representatives from municipalities, States, Indian Tribes, EPA, industrial and commercial sectors, agriculture, and environmental and public interest groups.

The Storm Water Phase II FACA Subcommittee ("Subcommittee") met fourteen times between September 1995 and June 1998. The 32 Subcommittee members discussed possible regulatory frameworks at these meetings as well as during numerous other meetings and conference calls. Members of the FACA Committee provided views regarding the development of the "no exposure" provision and other provisions in drafts of the Phase II rule. EPA provided Subcommittee members with four successive drafts of the proposed rule and preamble, outlines of the rule, summaries of the written comments received on each draft, and documents identifying the changes made to each draft. In the course of providing input to the Committee, individual

Subcommittee members provided significant input and advice that EPA considered in the context of public comments received. Ultimately, the Subcommittee did not provide a written report back to the FACA Committee, and the FACA Committee did not provide written advice and recommendations to EPA. The Agency, therefore, did not rely on group recommendations in developing today's rule, but does consider the process to have resulted in important public outreach.

#### *B. Water Quality Concerns/ Environmental Impact Studies and Assessments*

Storm water runoff from lands modified by human activities can harm surface water resources and, in turn, cause or contribute to an exceedance of water quality standards by changing natural hydrologic patterns, accelerating stream flows, destroying aquatic habitat, and elevating pollutant concentrations and loadings. Such runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients (phosphorous and nitrogen), heavy metals and other toxic pollutants, pathogens, toxins, oxygen-demanding substances (organic material), and floatables (U.S. EPA. 1992).

*Environmental Impacts of Storm Water Discharges: A National Profile.* EPA 841-R-92-001. Office of Water, Washington, DC). After a rain, storm water runoff carries these pollutants into nearby streams, rivers, lakes, estuaries, wetlands, and oceans. The highest concentrations of these contaminants often are contained in "first flush" discharges, which occur during the first major storm after an extended dry period (Schueler, T.R. 1994. "First Flush of Stormwater Pollutants Investigated in Texas." Note 28. *Watershed Protection Techniques* 1(2)). Individually and combined, these pollutants impair water quality, threatening designated beneficial uses and causing habitat alteration or destruction.

Uncontrolled storm water discharges from areas of urban development and construction activity negatively impact receiving waters by changing the physical, biological, and chemical composition of the water, resulting in an unhealthy environment for aquatic organisms, wildlife, and humans. The following sections discuss the studies and data that address and support this finding.

Although water quality problems also can occur from agricultural storm water discharges and return flows from irrigated agriculture, this area of

concern is statutorily exempted from regulation as a point source under the Clean Water Act and is not discussed here. (See CWA section 502(14)). Other storm water sources not specifically identified in the regulations may be of concern in certain areas and can be addressed on a case-by-case (or category-by-category) basis through the NPDES designation authority preserved by CWA section 402(p)(2)(6), as well as today's rule.

#### 1. Urban Development

Urbanization alters the natural infiltration capability of the land and generates a host of pollutants that are associated with the activities of dense populations, thus causing an increase in storm water runoff volumes and pollutant loadings in storm water discharged to receiving waterbodies (U.S. EPA, 1992). Urban development increases the amount of impervious surface in a watershed as farmland, forests, and meadowlands with natural infiltration characteristics are converted into buildings with rooftops, driveways, sidewalks, roads, and parking lots with virtually no ability to absorb storm water. Storm water and snow-melt runoff wash over these impervious areas, picking up pollutants along the way while gaining speed and volume because of their inability to disperse and filter into the ground. What results are storm water flows that are higher in volume, pollutants, and temperature than the flows in less impervious areas, which have more natural vegetation and soil to filter the runoff (U.S. EPA, 1997. *Urbanization and Streams: Studies of Hydrologic Impacts*. EPA 841-R-97-009. Office of Water. Washington, DC).

Studies reveal that the level of imperviousness in an area strongly correlates with the quality of the nearby receiving waters. For example, a study in the Puget Sound lowland ecoregion found that when the level of basin development exceeded 5 percent of the total impervious area, the biological integrity and physical habitat conditions that are necessary to support natural biological diversity and complexity declined precipitously (May, C.W., E.B. Welch, R.R. Horner, J.R. Karr, and B.W. May. 1997. *Quality Indices for Urbanization Effects in Puget Sound Lowland Streams*, Technical Report No. 154. University of Washington Water Resources Series). Research conducted in numerous geographical areas, concentrating on various variables and employing widely different methods, has revealed a similar conclusion: stream degradation occurs at relatively low levels of imperviousness, such as 10 to 20 percent (even as low as 5 to 10

percent according to the findings of the Washington study referenced above) (Schueler, T.R. 1994. "The Importance of Imperviousness." *Watershed Protection Techniques* 1(3); May, C., R.R. Horner, J.R. Karr, B.W. Mar, and E.B. Welch. 1997. "Effects Of Urbanization On Small Streams In The Puget Sound Lowland Ecoregion." *Watershed Protection Techniques* 2(4); Yoder, C.O., R.J. Miltner, and D. White. 1999. "Assessing the Status of Aquatic Life Designated Uses in Urban and Suburban Watersheds." In *Proceedings: National Conference on Retrofits Opportunities in Urban Environments*. EPA 625-R-99-002, Washington, DC; Yoder, C.O. and R.J. Miltner. 1999. "Assessing Biological Quality and Limitations to Biological Potential in Urban and Suburban Watersheds in Ohio." In *Comprehensive Stormwater & Aquatic Ecosystem Management Conference Papers*, Auckland, New Zealand). Furthermore, research has indicated that few, if any, urban streams can support diverse benthic communities at imperviousness levels of 25 percent or more. An area of medium density single family homes can be anywhere from 25 percent to nearly 60 percent impervious, depending on the design of the streets and parking (Schueler, 1994).

In addition to impervious areas, urban development creates new pollution sources as population density increases and brings with it proportionately higher levels of car emissions, car maintenance wastes, pet waste, litter, pesticides, and household hazardous wastes, which may be washed into receiving waters by storm water or dumped directly into storm drains designed to discharge to receiving waters. More people in less space results in a greater concentration of pollutants that can be mobilized by, or disposed into, storm water discharges from municipal separate storm sewer systems. A modeling system developed for the Chesapeake Bay indicated that contamination of the Bay and its tributaries from runoff is comparable to, if not greater than, contamination from industrial and sewage sources (Cohn-Lee, R. and D. Cameron. 1992. "Urban Stormwater Runoff Contamination of the Chesapeake Bay: Sources and Mitigation." *The Environmental Professional*, Vol. 14).

#### a. Large-Scale Studies and Assessments

In support of today's regulatory designation of MS4s in urbanized areas, the Agency relied on broad-based assessments of urban storm water runoff and related water quality impacts, as well as more site-specific studies. The

first national assessment of urban runoff characteristics was completed for the *Nationwide Urban Runoff Program (NURP)* study (U.S. EPA. 1983. *Results of the Nationwide Urban Runoff Program, Volume 1—Final Report*. Office of Water. Washington, D.C.). The NURP study is the largest nationwide evaluation of storm water discharges, which includes adverse impacts and sources, undertaken to date.

EPA conducted the NURP study to facilitate understanding of the nature of urban runoff from residential, commercial, and industrial areas. One objective of the study was to characterize the water quality of discharges from separate storm sewer systems that drain residential, commercial, and light industrial (industrial parks) sites. Storm water samples from 81 residential and commercial properties in 22 urban/suburban areas nationwide were collected and analyzed during the 5-year period between 1978 and 1983. The majority of samples collected in the study were analyzed for eight conventional pollutants and three heavy metals.

Data collected under the NURP study indicated that discharges from separate storm sewer systems draining runoff from residential, commercial, and light industrial areas carried more than 10 times the annual loadings of total suspended solids (TSS) than discharges from municipal sewage treatment plants that provide secondary treatment. The NURP study also indicated that runoff from residential and commercial areas carried somewhat higher annual loadings of chemical oxygen demand (COD), total lead, and total copper than effluent from secondary treatment plants. Study findings showed that fecal coliform counts in urban runoff typically range from tens to hundreds of thousands per hundred milliliters of runoff during warm weather conditions, with the median for all sites being around 21,000/100 ml. This is generally consistent with studies that found that fecal coliform mean values range from 1,600 coliform fecal units (CFU)/100 ml to 250,000 cfu/100 ml (Makepeace, D.K., D.W. Smith, and S.J. Stanley. 1995. "Urban Storm Water Quality: Summary of Contaminant Data." *Critical Reviews in Environmental Science and Technology* 25(2):93-139). Makepeace, et al., summarized ranges of contaminants from storm water, including physical contaminants such as total solids (76—36,200 mg/L) and copper (up to 1.41 mg/L); organic chemicals; organic compounds, such as oil and grease (up to 110 mg/L); and microorganisms.

Monitoring data summarized in the NURP study provided important information about urban runoff from residential, commercial, and light industrial areas. The study concluded that the quality of urban runoff can be affected adversely by several sources of pollution that were not directly evaluated in the study, including illicit discharges, construction site runoff, and illegal dumping. Data from the NURP study were analyzed further in the U.S. Geological Survey (USGS) Urban Storm Water Data Base for 22 Metropolitan Areas Throughout the United States study (Driver, N.E., M.H. Mustard, R.B. Rhinesmith, and R.F. Middleburg. 1985. *U.S. Geological Survey Urban Storm Water Data Base for 22 Metropolitan Areas Throughout the United States*. Report No. 85-337 USGS. Lakewood, CO). The USGS report summarized additional monitoring data compiled during the mid-1980s, covering 717 storm events at 99 sites in 22 metropolitan areas and documented problems associated with metals and sediment concentrations in urban storm water runoff. More recent reports have confirmed the pollutant concentration data collected in the NURP study (Marsalek, J. 1990. "Evaluation of Pollutant Loads from Urban Nonpoint Sources." *Wat. Sci. Tech.* 22(10/11):23-30; Makepeace, et al., 1995).

Commenters argued that the NURP study does not support EPA's contention that urban activities significantly jeopardize attainment of water quality standards. One commenter argued that the NURP study and the 1985 USGS study are seriously out of date. Because they were issued 10 years or more before the implementation of the current storm water permit program, the data in those reports do not reflect conditions that exist after implementation of permits issued by authorized States and EPA for storm water from construction sites, large municipalities, and industrial activities.

In response, EPA notes that it is not relying solely on the NURP study to describe current water quality impairment. Rather, EPA is citing NURP as a source of data on typical pollutant concentrations in urban runoff. Recent studies have not found significantly different pollutant concentrations in urban runoff when compared to the original NURP data (see Makepeace, et al., 1995; Marsalek, 1990; and Pitt, et al., 1995).

America's Clean Water—the States' Nonpoint Source Assessment (Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). 1985. *America's Clean Water—The States' Nonpoint Source*

*Assessment*. Prepared in cooperation with the U.S. EPA, Office of Water, Washington, DC), a comprehensive study of diffuse pollution sources conducted under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and EPA revealed that 38 States reported urban runoff as a major cause of designated beneficial use impairment and 21 States reported storm water runoff from construction sites as a major cause of beneficial use impairment. In addition, the 1996 305(b) Report (U.S. EPA. 1998. *The National Water Quality Inventory, 1996 Report to Congress*. EPA 841-R-97-008. Office of Water. Washington, DC), provides a national assessment of water quality based on biennial reports submitted by the States as required under CWA section 305(b) of the CWA. In the CWA 305(b) reports, States, Tribes, and Territories assess their individual water quality control programs by examining the attainment or nonattainment of the designated uses assigned to their rivers, lakes, estuaries, wetlands, and ocean shores. A designated use is the legally applicable use specified in a water quality standard for a watershed, waterbody, or segment of a waterbody. The designated use is the desirable use that the water quality should support. Examples of designated uses include drinking water supply, primary contact recreation (swimming), and aquatic life support. Each CWA 305(b) report indicates the assessed fraction of a State's waters that are fully supporting, partially supporting, or not supporting designated beneficial uses.

In their reports, States, Tribes, and Territories first identified and then assigned the sources of water quality impairment for each impaired waterbody using the following categories: industrial, municipal sewage, combined sewer overflows, urban runoff/storm sewers, agricultural, silvicultural, construction, resource extraction, land disposal, hydrologic modification, and habitat modification. The 1996 Inventory, based on a compilation of 60 individual 305(b) reports submitted by States, Tribes, and Territories, assessed the following percentages of total waters nationwide: 19 percent of river and stream miles; 40 percent of lake, pond, and reservoir acres; 72 percent of estuary square miles; and 6 percent of ocean shoreline waters. The 1996 Inventory indicated that approximately 40 percent of the Nation's assessed rivers, lakes, and estuaries are impaired. Waterbodies deemed as "impaired" are either

partially supporting designated uses or not supporting designated uses.

The 1996 Inventory also found urban runoff/discharges from storm sewers to be a major source of water quality impairment nationwide. Urban runoff/storm sewers were found to be a source of pollution in 13 percent of impaired rivers; 21 percent of impaired lakes, ponds, and reservoirs; and 45 percent of impaired estuaries (second only to industrial discharges). In addition, urban runoff was found to be the leading cause of ocean impairment for those ocean miles surveyed.

In addition, a recent USGS study of urban watersheds across the United States has revealed a link between urban development and contamination of local waterbodies. The study found the highest levels of organic contaminants, known as polycyclic aromatic hydrocarbons (PAHs) (products of combustion of wood, grass, and fossil fuels), in the reservoirs of urbanized watersheds (U.S. Geological Survey (USGS). 1998. *Research Reveals Link Between Development and Contamination in Urban Watersheds*. USGS news release. USGS National Water-Quality Assessment Program).

Urban storm water also can contribute significant amounts of toxicants to receiving waters. Pitt, et. al. (1993), found heavy metal concentrations in the majority of samples analyzed. Industrial or commercial areas were likely to be the most significant pollutant source areas (Pitt, R., R. Field, M. Lalor, M. Brown 1993. "Urban stormwater toxic pollutants: assessment, sources, and treatability" *Water Environment Research*, 67(3):260-75).

#### b. Local and Watershed-Based Studies

In addition to the large-scale nationwide studies and assessments, a number of local and watershed-based studies from across the country have documented the detrimental effects of urban storm water runoff on water quality. A study of urban streams in Milwaukee County, Wisconsin, found local streams to be highly degraded due primarily to urban runoff, while three studies in the Atlanta, Georgia, region were characterized as being "the first documentation in the Southeast of the strong negative relationship between urbanization and stream quality that has been observed in other ecoregions" (Masterson, J. and R. Bannerman. 1994. "Impacts of Storm Water Runoff on Urban Streams in Milwaukee County, Wisconsin." Paper presented at National Symposium on Water Quality: American Water Resources Association; Schueler, T.R. 1997. "Fish Dynamics in Urban Streams Near Atlanta, Georgia."



Technical Note 94. *Watershed Protection Techniques* 2(4)). Several other studies, including those performed in Arizona (Maricopa County), California (San Jose's Coyote Creek), Massachusetts (Green River), Virginia (Tuckahoe Creek), and Washington (Puget Sound lowland ecoregion), all had the same finding: runoff from urban areas greatly impair stream ecology and the health of aquatic life; the more heavily developed the area, the more detrimental the effects (Lopes, T. and K. Fossum. 1995. "Selected Chemical Characteristics and Acute Toxicity of Urban Stormwater, Streamflow, and Bed Material, Maricopa County, Arizona." *Water Resources Investigations Report* 95-4074. USGS; Pitt, R. 1995. "Effects of Urban Runoff on Aquatic Biota." In *Handbook of Ecotoxicology*; Pratt, J. and R. Coler. 1979. "Ecological Effects of Urban Stormwater Runoff on Benthic Macroinvertebrates Inhabiting the Green River, Massachusetts." Completion Report Project No. A-094. Water Resources Research Center. University of Massachusetts at Amherst.; Schueler, T.R. 1997. "Historical Change in a Warmwater Fish Community in an Urbanizing Watershed." Technical Note 93. *Watershed Protection Techniques* 2(4); May, C., R. Horner, J. Karr, B. Mar, and E. Welch. 1997. "Effects Of Urbanization On Small Streams In The Puget Sound Lowland Ecoregion." *Watershed Protection Techniques* 2(4)).

Pitt and others also described the receiving water effects on aquatic organisms associated with urban runoff (Pitt, R.E. 1995. "Biological Effects of Urban Runoff Discharges" In *Stormwater Runoff and Receiving Systems: Impact, Monitoring, and Assessment*, ed. E.E Herricks, Lewis Publishers; Crunkilton, R., J. Kleist, D. Bierman, J. Ramcheck, and W. DeVita. 1999. "Importance of Toxicity as a Factor Controlling the Distribution of Aquatic Organisms in an Urban Stream." In *Comprehensive Stormwater & Aquatic Ecosystem Management Conference Papers*. Auckland, New Zealand).

In Wisconsin, runoff samples were collected from streets, parking lots, roofs, driveways, and lawns. Source areas were broken up into residential, commercial, and industrial. Geometric mean concentration data for residential areas included total solids of about 500-800 mg/L from streets and 600 mg/L from lawns. Fecal coliform data from residential areas ranged from 34,000 to 92,000 cfu/100 mL for streets and driveways. Contaminant concentration data from commercial and industrial source areas were lower for total solids

and fecal coliform, but higher for total zinc (Bannerman, R.T., D.W. Owens, R.B. Dods, and N.J. Hornewer. 1993. "Sources of Pollutants in Wisconsin Stormwater." *Wat. Sci. Tech.* 28(3-5):241-59).

Bannerman, et al. also found that streets contribute higher loads of pollutants to urban storm water than any other residential development source. Two small urban residential watersheds were evaluated to determine that lawns and streets are the largest sources of total and dissolved phosphorus in the basins (Waschbusch, R.J., W.R. Selbig, and R.T. Bannerman. 1999. "Sources of Phosphorus in Stormwater and Street Dirt from Two Urban Residential Basins in Madison, Wisconsin, 1994-95." *Water Resources Investigations Report* 99-4021. U.S. Geological Survey). A number of other studies have indicated that urban roadways often contain significant quantities of metal elements and solids (Sansalone, J.J. and S.G. Buchberger. 1997. "Partitioning and First Flush of Metals in Urban Roadway Storm Water." *ASCE Journal of Environmental Engineering* 123(2); Sansalone, J.J., J.M. Koran, J.A. Smithson, and S.G. Buchberger. 1998. "Physical Characteristics of Urban Roadway Solids Transported During Rain Events" *ASCE Journal of Environmental Engineering* 124(5); Klein, L.A., M. Lang, N. Nash, and S.L. Kirschner. 1974. "Sources of Metals in New York City Wastewater" *J. Water Pollution Control Federation* 46(12):2653-62; Barrett, M.E, R.D. Zuber, E.R. Collins, J.F. Malina, R.J. Charbeneau, and G.H. Ward., 1993. "A Review and Evaluation of Literature Pertaining to the Quantity and Control of Pollution from Highway Runoff and Construction." Research Report 1943-1. Center for Transportation Research, University of Texas, Austin).

#### c. Beach Closings/Advisories

Urban wet weather flows have been recognized as the primary sources of estuarine pollution in coastal communities. Urban storm water runoff, sanitary sewer overflows, and combined sewer overflows have become the largest causes of beach closings in the United States in the past three years. Storm water discharges from urban areas not only pose a threat to the ecological environment, they also can substantially affect human health. A survey of coastal and Great Lakes communities reports that in 1998, more than 1,500 beach closings and advisories were associated with storm water runoff (Natural Resources Defense Council. 1999. "A Guide to Water Quality at Vacation Beaches" New York, NY). Other reports

also document public health, shellfish bed, and habitat impacts from storm water runoff, including more than 823 beach closings/advisories issued in 1995 and more than 407 beach closing/advisories issued in 1996 due to urban runoff (Natural Resources Defense Council. 1996. *Testing the Waters Volume VI: Who Knows What You're Getting Into*. New York, NY; NRDC. 1997. *Testing the Waters Volume VII: How Does Your Vacation Beach Rate*. New York, NY; Morton, T. 1997. *Draining to the Ocean: The Effects of Stormwater Pollution on Coastal Waters*. American Oceans Campaign, Santa Monica, CA). The Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay (Haile, R.W., et. al. 1996. "An Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay." *Final Report prepared for the Santa Monica Bay Restoration Project*) concluded that there is a 57 percent higher rate of illness in swimmers who swim adjacent to storm drains than in swimmers who swim more than 400 yards away from storm drains. This and other studies document a relationship between gastrointestinal illness in swimmers and water quality, the latter of which can be heavily compromised by polluted storm water discharges.

#### 2. Non-Storm Water Discharges Through Municipal Storm Sewers

Studies have shown that discharges from MS4s often include wastes and wastewater from non-storm water sources. Federal regulations (§ 122.26(b)(2)) define an illicit discharge as " \* \* \* any discharge to an MS4 that is not composed entirely of storm water \* \* \*," with some exceptions. These discharges are "illicit" because municipal storm sewer systems are not designed to accept, process, or discharge such wastes. Sources of illicit discharges include, but are not limited to: sanitary wastewater; effluent from septic tanks; car wash, laundry, and other industrial wastewaters; improper disposal of auto and household toxics, such as used motor oil and pesticides; and spills from roadway and other accidents.

Illicit discharges enter the system through either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the MS4 from cracked sanitary systems, spills collected by drain outlets, and paint or used oil dumped directly into a drain). The result is untreated discharges that contribute high levels of pollutants,



including heavy metals, toxics, oil and grease, solvents, nutrients, viruses and bacteria into receiving waterbodies. The NURP study, discussed earlier, found that pollutant levels from illicit discharges were high enough to significantly degrade receiving water quality and threaten aquatic, wildlife, and human health. The study noted particular problems with illicit discharges of sanitary wastes, which can be directly linked to high bacterial counts in receiving waters and can be dangerous to public health.

Because illicit discharges to MS4s can create severe widespread contamination and water quality problems, several municipalities and urban counties performed studies to identify and eliminate such discharges. In Michigan, the Ann Arbor and Ypsilanti water quality projects inspected 660 businesses, homes, and other buildings and identified 14 percent of the buildings as having improper storm sewer drain connections. The program assessment revealed that, on average, 60 percent of automobile-related businesses, including service stations, automobile dealerships, car washes, body shops, and light industrial facilities, had illicit connections to storm sewer drains. The program assessment also showed that a majority of the illicit discharges to the storm sewer system resulted from improper plumbing and connections, which had been approved by the municipality when installed (Washtenaw County Statutory Drainage Board, 1987. Huron River Pollution Abatement Program).

In addition, an inspection of urban storm water outfalls draining into Inner Grays, Washington, indicated that 32 percent of these outfalls had dry weather flows. Of these flows, 21 percent were determined to have pollutant levels higher than the pollutant levels expected in typical urban storm water runoff characterized in the NURP study (U.S. EPA, 1993. *Investigation of Inappropriate Pollutant Entries Into Storm Drainage Systems—A User's Guide*. EPA 600/R-92/238. Office of Research and Development, Washington, DC). That same document reports a study in Toronto, Canada, that found that 59 percent of outfalls from the MS4 had dry-weather flows. Chemical tests revealed that 14 percent of these dry-weather flows were determined to be grossly polluted.

Inflows from aging sanitary sewer collection systems are one of the most serious illicit discharge-related problems. Sanitary sewer systems frequently develop leaks and cracks, resulting in discharges of pollutants to receiving waters through separate storm

sewers. These pollutants include sanitary waste and materials from sewer main construction (e.g., asbestos cement, brick, cast iron, vitrified clay). Municipalities have long recognized the reverse problem of storm water infiltration into sanitary sewer collection systems; this type of infiltration often disrupts the operation of the municipal sewage treatment plant.

The improper disposal of materials is another illicit discharge-related problem that can result in contaminated discharges from separate storm sewer systems in two ways. First, materials may be disposed of directly in a catch basin or other storm water conveyance. Second, materials disposed of on the ground may either drain directly to a storm sewer or be washed into a storm sewer during a storm event. Improper disposal of materials to street catch basins and other storm sewer inlets often occurs when people mistakenly believe that disposal to such areas is an environmentally sound practice. Part of the confusion may occur because some areas are served by combined sewer systems, which are part of the sanitary sewer collection system, and people assume that materials discharged to a catch basin will reach a municipal sewage treatment plant. Materials that are commonly disposed of improperly include used motor oil; household toxic materials; radiator fluids; and litter, such as disposable cups, cans, and fast-food packages. EPA believes that there has been increasing success in addressing these problems through initiatives such as storm drain stenciling and recycling programs, including household hazardous waste special collection days.

Programs that reduce illicit discharges to separate storm sewers have improved water quality in several municipalities. For example, Michigan's Huron River Pollution Abatement Program found the elimination of illicit connections caused a measurable improvement in the water quality of the Washtenaw County storm sewers and the Huron River (Washtenaw County Statutory Drainage Board, 1987). In addition, an illicit detection and remediation program in Houston, Texas, has significantly improved the water quality of Buffalo Bayou. Houston estimated that illicit flows from 132 sources had a flow rate as high as 500 gal/min. Sources of the illicit discharges included broken and plugged sanitary sewer lines, illicit connections from sanitary lines to storm sewer lines, and floor drain connections (Glanton, T., M.T. Garrett, and B. Goloby. 1992. *The Illicit Connection: Is*

It the Problem? *Wat. Env. Tech.* 4(9):63–8).

### 3. Construction Site Runoff

Storm water discharges generated during construction activities can cause an array of physical, chemical, and biological water quality impacts. Specifically, the biological, chemical, and physical integrity of the waters may become severely compromised. Water quality impairment results, in part, because a number of pollutants are preferentially absorbed onto mineral or organic particles found in fine sediment. The interconnected process of erosion (detachment of the soil particles), sediment transport, and delivery is the primary pathway for introducing key pollutants, such as nutrients (particularly phosphorus), metals, and organic compounds into aquatic systems (Novotny, V. and G. Chesters. 1989. "Delivery of Sediment and Pollutants from Nonpoint Sources: A Water Quality Perspective." *Journal of Soil and Water Conservation*, 44(6):568–76). Estimates indicate that 80 percent of the phosphorus and 73 percent of the Kjeldahl nitrogen in streams is associated with eroded sediment (U.S. Department of Agriculture. 1989. "The Second RCA Appraisal, Soil, Water and Related Resources on Nonfederal Land in the United States, Analysis of Condition and Trends." Cited in Fennessey, L.A.J., and A.R. Jarrett. 1994. "The Dirt in a Hole: a Review of Sedimentation Basins for Urban Areas and Construction Sites." *Journal of Soil and Water Conservation*, 49(4):317–23).

In watersheds experiencing intensive construction activity, the localized impacts of water quality may be severe because of high pollutant loads, primarily sediments. Siltation is the largest cause of impaired water quality in rivers and the third largest cause of impaired water quality in lakes (U.S. EPA, 1998). The 1996 305(b) report also found that construction site discharges were a source of pollution in: 6 percent of impaired rivers; 11 percent of impaired lakes, ponds, and reservoirs; and 11 percent of impaired estuaries. Introduction of coarse sediment (coarse sand or larger) or a large amount of fine sediment is also a concern because of the potential of filling lakes and reservoirs (along with the associated remediation costs for dredging), as well as clogging stream channels (e.g., Paterson, R.G., M.I. Luger, E.J. Burby, E.J. Kaiser, H.R. Malcolm, and A.C. Beard. 1993. "Costs and Benefits of Urban Erosion and Sediment Control: North Carolina Experience." *Environmental Management* 17(2):167–78). Large inputs of coarse sediment into

stream channels initially will reduce stream depth and minimize habitat complexity by filling in pools (U.S. EPA. 1991. *Monitoring Guidelines to Evaluate Effects of Forestry Activities on Streams in the Pacific Northwest and Alaska*. EPA 910/9-91-001. Seattle, WA). In addition, studies have shown that stream reaches affected by construction activities often extend well downstream of the construction site. For example, between 4.8 and 5.6 kilometers of stream below construction sites in the Patuxent River watershed were observed to be impacted by sediment inputs (Fox, H.L. 1974. "Effects of Urbanization on the Patuxent River, with Special Emphasis on Sediment Transport, Storage, and Migration." Ph.D. dissertation. Johns Hopkins University, Baltimore, MD. As Cited in Klein, R.D. 1979. "Urbanization and Stream Quality Impairment." *Water Resources Bulletin* 15(4): 948-63).

A primary concern at most construction sites is the erosion and transport process related to fine sediment because rain splash, rills (i.e., a channel small enough to be removed by normal agricultural practices and typically less than 1-foot deep), and sheetwash encourage the detachment and transport of this material to waterbodies (Storm Water Quality Task Force. 1993. *California Storm Water Best Management Practice Handbooks—Construction Activity*. Oakland, CA: Blue Print Service). Construction sites also can generate other pollutants associated with onsite wastes, such as sanitary wastes or concrete truck washout.

Although streams and rivers naturally carry sediment loads, erosion from construction sites and runoff from developed areas can elevate these loads to levels well above those in undisturbed watersheds. It is generally acknowledged that erosion rates from construction sites are much greater than from almost any other land use (Novotny, V. and H. Olem. 1994. *Water Quality: Prevention, Identification, and Management of Diffuse Pollution*. New York: Van Nostrand Reinhold). Results from both field studies and erosion models indicate that erosion rates from construction sites are typically an order of magnitude larger than row crops and several orders of magnitude greater than rates from well-vegetated areas, such as forests or pastures (USDA. 1970. "Controlling Erosion on Construction Sites." *Agriculture Information Bulletin*, Washington, DC; Meyer, L.D., W.H. Wischmeier, and W.H. Daniel. 1971. "Erosion, Runoff and Revegetation of Denuded Construction Sites." *Transactions of the ASAE* 14(1):138-41;

Owen, O.S. 1975. *Natural Resource Conservation*. New York: MacMillan. As cited in Paterson, et al., 1993).

A recent review of the efficiency of sediment basins indicated that inflows from 12 construction sites had a mean TSS concentration of about 4,500 mg/L (Brown, W.E. 1997. "The Limits of Settling." Technical Note No. 83. *Watershed Protection Techniques* 2(3)). In Virginia, suspended sediment concentrations from housing construction sites were measured at 500-3,000 mg/L, or about 40 times larger than the concentrations from already-developed urban areas (Kuo, C.Y. 1976. "Evaluation of Sediment Yields Due to Urban Development." Bulletin No. 98. Virginia Water Resources Research Center, Virginia Polytechnic Institute and State University, Blacksburg, VA).

Similar impacts from storm water runoff have been reported in a number of other studies. For example, Daniel, et al., monitored three residential construction sites in southeastern Wisconsin and determined that annual sediment yields were more than 19 times the yields from agricultural areas (Daniel, T.C., D. McGuire, D. Stoffel, and B. Miller. 1979. "Sediment and Nutrient Yield from Residential Construction Sites" *Journal of Environmental Quality* 8(3):304-08). Daniel, et al., identified total storm runoff, followed by peak storm runoff, as the most influential factors controlling the sediment loadings from residential construction sites. Daniel, et al., also found that suspended sediment concentrations were 15,000-20,000 mg/L in moderate events and up to 60,000 mg/L in larger events.

Wolman and Schick (Wolman, M.G. and A.P. Schick. 1967. "Effects of Construction on Fluvial Sediment, Urban and Suburban Areas of Maryland." *Water Resources Research* 3(2): 451-64) studied the impacts of development on fluvial systems in Maryland and determined that sediment yields in areas undergoing construction were 1.5 to 75 times greater than detected in natural or agricultural catchments. The authors summarize the potential impacts of construction on sediment yields by stating that "the equivalent of many decades of natural or even agricultural erosion may take place during a single year from areas cleared for construction" (Wolman and Schick, 1967).

A number of studies have examined the effects of road construction on erosion rates and sediment yields. A highway construction project in West Virginia disturbed only 4.2 percent of a 4.72-square-mile basin, but resulted in a

three-fold increase in suspended sediment yields (Downs, S.C. and D.H. Appel. 1986. *Progress Report on the Effects of Highway Construction on Suspended-Sediment Discharge in the Coal River and Trace Fork, West Virginia*, 1975-81. USGS Water Resources Investigations Report 84-4275. Charlestown, WV). During the largest storm event, it was estimated that 80 percent of the sediment in the stream originated from the construction site. As is often the case, the increase in suspended sediment load could not be detected further downstream, where the drainage area was more than 50 times larger (269 square miles).

Another study evaluated the effect of 290 acres of highway construction on watersheds ranging in size from 5 to 38 square miles. Suspended sediment loads in the smallest watershed increased by 250 percent, and the estimated sediment yield from the construction area was 37 tons/acre during a 2-year period (Hainly, R.A. 1980. *The Effects of Highway Construction on Sediment Discharge into Blockhouse Creek and Stream Valley Run, Pennsylvania*. USGS Water Resources Investigations Report 80-68. Harrisburg, PA). A more recent study in Hawaii showed that highway construction increased suspended sediment loads by 56 to 76 percent in three small (1 to 4 square mile) basins (Hill, B.R. 1996. *Streamflow and Suspended-Sediment Loads Before and During Highway Construction, North Halawa, Haiku, and Kamooalii Drainage Basins, Oahu, Hawaii, 1983-91*. USGS Water Resources Investigations Report 96-4259. Honolulu, HI). A 1970 study determined that sediment yields from construction areas can be as much as 500 times the levels detected in rural areas (National Association of Counties Research Foundation. 1970. *Urban Soil Erosion and Sediment Control*. Water Pollution Control Research Series, Program #15030 DTL. Federal Water Quality Administration, U.S. Department of Interior, Washington, DC).

Yorke and Herb (Yorke, T.H., and W.J. Herb. 1978. *Effects of Urbanization on Streamflow and Sediment Transport in the Rock Creek and Anacostia River Basins, Montgomery County, Maryland, 1962-74*. USGS Professional Paper 1003, Washington, DC) evaluated nine subbasins in the Maryland portion of the Anacostia watershed for more than a decade in an effort to define the impacts of changing land use/land cover on sediment in runoff. Average annual suspended sediment yields for construction sites ranged from 7 to 100 tons/acre. Storm water discharges from construction sites that occur when the land area is disturbed (and prior to

surface stabilization) can significantly impact designated uses. Examples of designated uses include public water supply, recreation, and propagation of fish and wildlife. The siltation process described previously can threaten all three designated uses by (1) depositing high concentrations of pollutants in public water supplies; (2) decreasing the depth of a waterbody, which can reduce the volume of a reservoir or result in limited use of a water body by boaters, swimmers, and other recreational enthusiasts; and (3) directly impairing the habitat of fish and other aquatic species, which can limit their ability to reproduce.

Excess sediment can cause a number of other problems for waterbodies. It is associated with increased turbidity and reduced light penetration in the water column, as well as more long-term effects associated with habitat destruction and increased difficulty in filtering drinking water. Numerous studies have examined the effect that excess sediment has on aquatic ecosystems. For example, sediment from road construction activity in Northern Virginia reduced aquatic insect and fish communities by up to 85 percent and 40 percent, respectively (Reed, J.R. 1997. "Stream Community Responses to Road Construction Sediments." Bulletin No. 97. Virginia Water Resources Research Center, Virginia Polytechnic Institute, Blacksburg, VA. As cited in Klein, R.D. 1990. *A Survey of Quality of Erosion and Sediment Control and Storm Water Management in the Chesapeake Bay Watershed*. Annapolis, MD: Chesapeake Bay Foundation). Other studies have shown that fine sediment (fine sand or smaller) adversely affects aquatic ecosystems by reducing light penetration, impeding sight-feeding, smothering benthic organisms, abrading gills and other sensitive structures, reducing habitat by clogging interstitial spaces within a streambed, and reducing the intergravel dissolved oxygen by reducing the permeability of the bed material (Everest, F.H., J.C. Beschta, K.V. Scrivener, J.R. Koski, J.R. Sedell, and C.J. Cederholm. 1987. "Fine Sediment and Salmonid Production: A Paradox." *Streamside Management: Forestry and Fishery Interactions*, Contract No. 57, Institute of Forest Resources, University of Washington, Seattle, WA). For example, 4.8 and 5.6 kilometers of stream below construction sites in the Patuxent River watershed in Maryland were found to have fine sediment amounts 15 times greater than normal (Fox, 1974. As cited in Klein, 1979). Benthic organisms in the streambed can be smothered by

sediment deposits, causing changes in aquatic flora and fauna, such as fish species composition (Wolman and Schick, 1967). In addition, the primary cause of coral reef degradation in coastal areas is attributed to land disturbances and dredging activities due to urban development (Rogers, C.S. 1990. "Responses of Coral Reefs and Reef Organizations to Sedimentation." *Marine Ecology Progress Series*, 62:185-202).

EPA believes that the water quality impact from small construction sites is as high as or higher than the impact from larger sites on a per acre basis. The concentration of pollutants in the runoff from smaller sites is similar to the concentrations in the runoff from larger sites. The proportion of sediment that makes it from the construction site to surface waters is likely the same for larger and smaller construction sites in urban areas because the runoff from either site is usually delivered directly to the storm drain network where there is no opportunity for the sediment to be filtered out.

The expected contribution of total sediment yields from small sites depends, in part, on the extent to which erosion and sedimentation controls are being applied. Because current storm water regulations are more likely to require erosion and sedimentation controls on larger sites in urban areas, smaller construction sites that lack such programs are likely to contribute a disproportionate amount of the total sediment from construction activities (MacDonald, L.H. 1997. *Technical Justification for Regulating Construction Sites 1-5 Acres in Size*. Unpublished report submitted to U.S. EPA, Washington, DC). Smaller construction sites are less likely to have an effective plan to control erosion and sedimentation, are less likely to properly implement and maintain their plans, and are less likely to be inspected (Brown, W. and D. Caraco. 1997. *Controlling Storm Water Runoff Discharges from Small Construction Sites: A National Review*. Submitted to Office of Wastewater Management, U.S. EPA, Washington, DC., by the Center for Watershed Protection, Silver Spring, MD). The proportion of sediment that makes it from the construction site to surface waters is likely the same for larger and smaller construction sites in urban areas because the runoff from either site is usually delivered directly to the storm drain network, where there is no opportunity for the sediment to be filtered out.

To confirm its belief that sediment yields from small sites are as high as or higher than the 20 to 150 tons/acre/year

measured from larger sites, EPA gave a grant to the Dane County, Wisconsin Land Conservation Department, in cooperation with the USGS, to evaluate sediment runoff from two small construction sites. The first was a 0.34 acre residential lot and the second was a 1.72 acre commercial office development. Runoff from the sites was channeled to a single discharge point for monitoring. Each site was monitored before, during, and after construction.

The Dane County study found that total solids concentrations from these small sites are similar to total solids concentrations from larger construction sites. Results show that for both of the study sites, total solids and suspended solids concentrations were significantly higher during construction than either before or after construction. For example, preconstruction total solids concentrations averaged 642 mg/L during the period when ryegrass was established, active construction total solids concentrations averaged 2,788 mg/L, and post-construction total solids concentrations averaged 132 mg/L (on a pollutant load basis, this equaled 7.4 lbs preconstruction, 35 lbs during construction, and 0.6 lbs post-construction for total solids). While this site was not properly stabilized before construction, after construction was complete and the site was stabilized, post-construction concentrations were more than 20 times less than during construction. The results were even more dramatic for the commercial site. The commercial site had one preconstruction event, which resulted in total solids concentrations of 138 mg/L, while active construction averaged more than 15,000 mg/L and post-construction averaged only 200 mg/L (on a pollutant load basis, this equaled 0.3 lbs preconstruction, 490 lbs during construction, and 13.4 lbs post-construction for total solids). The active construction period resulted in more than 75 times more sediment than either before or after construction (Owens, D.W., P. Jopke, D.W. Hall, J. Balousek and A. Roa. 1999. "Soil Erosion from Small Construction Sites." Draft USGS Fact Sheet. USGS and Dane County Land Conservation Department, WI). The total solids concentrations from these small sites in Wisconsin are similar to total solids concentrations from larger construction sites. For example, a study evaluating the effects of highway construction in West Virginia found that a small storm produced a sediment concentration of 7,520 mg/L (Downs and Appel, 1986).

One important aspect of small construction sites is the number of small sites relative to larger construction sites

and total land area within the watershed. Brown and Caraco surveyed 219 local jurisdictions to assess erosion and sediment control (ESC) programs. Seventy respondents provided data on the number of ESC permits for construction sites smaller than 5 acres. In 27 cases (38 percent of the respondents), more than three-quarters of the permits were for sites smaller than 5 acres; in another 18 cases (26 percent), more than half of the permits were for sites smaller than 5 acres.

In addition, data on the total acreage disturbed by smaller construction sites have been collected recently in two States (MacDonald, 1997). The most recent and complete data set is the listing of the disturbed area for each of the 3,831 construction sites permitted in North Carolina for 1994–1995 and 1995–1996. Nearly 61 percent of the sites that were 1 acre or larger were between 1.0 and 4.9 acres in size. This proportion was consistent between years. Data showed that this range of sites accounted for 18 percent of the total area disturbed by construction. The values showed very little variation between the 2 years of data. The total disturbed area for all sites over this 2-year period was nearly 33,000 acres, or about 0.1 percent of the total area of North Carolina.

EPA estimates that construction sites disturbing greater than 5 acres disturb 2.1-million acres of land (78.1 percent of the total) while sites disturbing between 1 and 5 acres of land disturb 0.5-million acres of land (19.4 percent). The remaining sites on less than 1 acres of land disturb 0.07-million acres of land (only 2.5 percent of the total). Given the high erosion rates associated with most construction sites, small construction sites can be a significant source of water quality impairment, particularly in small watersheds that are undergoing rapid development. Exempting sites under 1 acre will exclude only about 2.5 percent of acreage from program coverage, but will exclude a far higher number of sites, approximately 25 percent.

Several studies have determined that the most effective construction runoff control programs rely on local plan review and field enforcement (Paterson, R. G. 1994. "Construction Practices: the Good, the Bad, and the Ugly." *Watershed Protection Techniques* 1(3)). In his review, Paterson suggests that, given the critical importance of field implementation of erosion and sediment control programs and the apparent shortcomings that exist, much more focus should be given to plan implementation.

Several commenters disputed the data presented in the proposed rule for storm water discharges from smaller construction sites. One commenter stated that EPA has not adequately explained the basis for permitting construction activity down to 1 disturbed acre. Another commenter stated that EPA did not present sufficient data on water quality impacts from construction sites disturbing less than 5 acres.

EPA believes that the data presented above sufficiently support nationwide designation of storm water discharges from construction activity disturbing more than 1 acre. Based on total disturbed land area within a watershed, the cumulative effects of numerous small construction sites can have impacts similar to those of larger sites in a particular area. In addition, waivers for storm water discharges from smaller construction activity will exclude sites not expected to impair water quality. EPA will continue to collect water quality data on construction site storm water runoff.

### C. Statutory Background

In 1972, Congress enacted the CWA to prohibit the discharge of any pollutant to waters of the United States from a point source unless the discharge is authorized by an NPDES permit. Congress added CWA section 402(p) in 1987 to require implementation of a comprehensive program for addressing storm water discharges. Section 402(p)(1) required EPA or NPDES-authorized States or Tribes to issue NPDES permits for the following five classes of storm water discharges composed entirely of storm water ("storm water discharges") specifically listed under section 402(p)(2):

(A) a discharge subject to an NPDES permit before February 4, 1987

(B) a discharge associated with industrial activity

(C) a discharge from a municipal separate storm sewer system serving a population of 250,000 or more

(D) a discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000

(E) a discharge that an NPDES permitting authority determines to be contributing to a violation of a water quality standard or a significant contributor of pollutants to the waters of the United States.

Section 402(p)(3)(A) requires storm water discharges associated with industrial activity to meet all applicable provisions of section 402 and section 301 of the CWA, including technology-based requirements and any more

stringent requirements necessary to meet water quality standards. Section 402(p)(3)(B) establishes NPDES permit standards for discharges from municipal separate storm sewer systems, or MS4s. NPDES permits for discharges from MS4s (1) may be issued on a system or jurisdiction-wide basis, (2) must include a requirement to effectively prohibit non-storm water discharges into the storm sewers, and (3) must require controls to reduce pollutant discharges to the maximum extent practicable, including best management practices, and other provisions as the Administrator or the States determine to be appropriate for the control of such pollutants. At this time, EPA determines that water quality-based controls, implemented through the iterative processes described today are appropriate for the control of such pollutants and will result in reasonable further progress towards attainment of water quality standards. See sections II.L and II.H.3 of the preamble.

In CWA section 402(p)(4), Congress established statutory deadlines for the initial steps in implementing the NPDES program for storm water discharges. This section required development of NPDES permit application regulations, submission of NPDES permit applications, issuance of NPDES permits for sources identified in section 402(p)(2), and compliance with NPDES permit conditions. In addition, this section required industrial facilities and large MS4s to submit NPDES permit applications for storm water discharges by February 4, 1990. Medium MS4s were to submit NPDES permit applications by February 4, 1992. EPA and authorized NPDES States were prohibited from requiring an NPDES permit for any other storm water discharges until October 1, 1994.

Section 402(p)(5) required EPA to conduct certain studies and submit a report to Congress. This requirement is discussed in the following section.

Section 402(p)(6) requires EPA, in consultation with States and local officials, to issue regulations for the designation of additional storm water discharges to be regulated to protect water quality. It also requires EPA to extend the existing storm water program to regulate newly designated sources. At a minimum, the extension must establish (1) priorities, (2) requirements for State storm water management programs, and (3) expeditious deadlines. Section 402(p)(6) specifies that the program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as

appropriate. Today's rule implements this section.

#### D. EPA's Reports to Congress

Under CWA section 402(p)(5), EPA, in consultation with the States, was required to conduct a study. The study was to identify unregulated sources of storm water discharges, determine the nature and extent of pollutants in such discharges, and establish procedures and methods to mitigate the impacts of such discharges on water quality. Section 402(p)(5) also required EPA to report the results of the first two components of that study to Congress by October 1, 1988, and the final report by October 1, 1989.

In March 1995, EPA submitted to Congress a report that reviewed and analyzed the nature of storm water discharges from municipal and industrial facilities that were not already regulated under the initial NPDES regulations for storm water (U.S. Environmental Protection Agency, Office of Water. 1995. *Storm Water Discharges Potentially Addressed by Phase II of the National Pollutant Discharge Elimination System Storm Water Program: Report to Congress*. Washington, D.C. EPA 833-K-94-002) ("Report"). The Report also analyzed associated pollutant loadings and water quality impacts from these unregulated sources. Based on identification of unregulated municipal sources and analysis of information on impacts of storm water discharges from municipal sources, the Report recommended that the NPDES program for storm water focus on the 405 "urbanized areas" identified by the Bureau of the Census. The Report further found that a number of discharges from unregulated industrial facilities warranted further investigation to determine the need for regulation. It classified these unregulated industrial discharges in two groups: Group A and Group B. Group A comprised sources that may be considered a high priority for inclusion in the NPDES program for storm water because discharges from these sources are similar or identical to already regulated sources. These "look alike" storm water discharge sources were not covered in the initial NPDES regulations for storm water due to the language used to define "associated with industrial activity." In the initial regulations for storm water, "industrial activity" is identified using Standard Industrial Classification (SIC) codes. The use of SIC codes led to incomplete categorization of industrial activities with discharges that needed to be regulated to protect water quality. Group B consisted of 18 industrial

sectors, which included sources that EPA expected to contribute to storm water contamination due to the activities conducted and pollutants anticipated onsite (e.g., vehicle maintenance, machinery and electrical repair, and intensive agricultural activities).

EPA reported on the latter component of the section 402(p)(5) study via President Clinton's Clean Water Initiative, which was released on February 1, 1994 (U.S. Environmental Protection Agency, Office of Water. 1994. *President Clinton's Clean Water Initiative*. Washington, D.C. EPA 800-R-94-001) ("Initiative"). The Initiative addressed a number of issues associated with NPDES requirements for storm water discharges and proposed (1) establishing a phased compliance with a water quality standards approach for discharges from municipal separate storm sewer systems with priority on controlling discharges from municipal growth and development areas, (2) clarifying that the maximum extent practicable standard should be applied in a site-specific, flexible manner, taking into account cost considerations as well as water quality effects, (3) providing an exemption from the NPDES program for storm water discharges from industrial facilities with no activities or significant materials exposed to storm water, (4) providing extensions to the statutory deadlines to complete implementation of the NPDES program for the storm water program, (5) targeting urbanized areas for the requirements in the NPDES program for storm water, and (6) providing control of discharges from inactive and abandoned mines located on Federal lands in a more targeted, flexible manner. Additionally, prior to promulgation of today's rule, section 431 of the Agency's Appropriation Act for FY 2000 (Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 2000, Public Law 106-74, section 432 (1999)) directed EPA to report on certain matters to be covered in today's rule. That report supplements the study required by CWA Section 402(p)(5). EPA is publishing the availability of that report elsewhere in this issue of the **Federal Register**.

Several commenters asserted that the Report to Congress is an inadequate basis for the designation and regulation of sources covered under today's final rule, specifically the nationwide designation of small municipal separate storm sewer systems within urbanized areas and construction activities disturbing between one and five acres.

EPA believes that it has developed an adequate record for today's regulation both through the Report to Congress and the Clean Water Initiative and through more recent activities, including the FACA Subcommittee process, regulatory notices and evaluation of comments, and recent research and analysis. EPA does not interpret the congressional reporting requirements of CWA section 402(p)(5) to be the sole basis for determining sources to be regulated under today's final rule.

EPA's decision to designate on a national basis small MS4s in urbanized areas is supported by studies that clearly show a direct correlation between urbanization and adverse water quality impacts from storm water discharges. (Schueler, T. 1987. *Controlling Urban Runoff: A Practical Manual for Planning & Designing Urban BMPs*. Metropolitan Washington Council of Governments). "Urbanized areas"—within which all small MS4s would be covered—represent the most intensely developed and dense areas of the Nation. They constitute only two percent of the land area but 63 percent of the total population. See section I.B.1, Urban Development, above, for studies and assessments of the link between urban development and storm water impacts on water resources.

Commenters argued that the Report to Congress does not address storm water discharges from construction sites. They further argued that the designation of small construction sites per today's final rule goes beyond the President's 1994 Initiative because the Initiative only recommends requiring municipalities to implement a storm water management program to control unregulated storm water sources, "including discharges from construction of less than 5 acres, which are part of growth, development and significant redevelopment activities." They point out that the Initiative provides that unregulated storm water discharges not addressed through a municipal program would not be covered by the NPDES program. Commenters assert that EPA has not developed a record independent of its section 402(p)(5) studies that demonstrates the necessity of regulating under a separate NPDES permit storm water discharges from smaller construction sites "to protect water quality." EPA disagrees.

EPA evaluated the nature and extent of pollutants from construction site sources in a process that was separate and distinct from the development of the Report to Congress. Today's decision to regulate certain storm water discharges from construction sites disturbing less than 5 acres arose in part

out of the 9th Circuit remand in *NRDC v. EPA*, 966 F.2d 1292 (9th Cir. 1992). In that case, the court remanded portions of the Phase I storm water regulations related to discharges from construction sites. Those regulations define "storm water discharges associated with industrial activity" to include only those storm water discharges from construction sites disturbing 5 acres or more of total land area (see 40 CFR 122.26(b)(14)(x)). In its decision, the court concluded that the 5-acre threshold was improper because the Agency had failed to identify information "to support its perception that construction activities on less than 5 acres are non-industrial in nature" (966 F.2d at 1306). The court remanded the below 5 acre exemption to EPA for further proceedings (966 F.2d at 1310).

In a **Federal Register** notice issued on December 18, 1992, EPA noted that it did not believe that the Court's decision had the effect of automatically subjecting small construction sites to the existing application requirements and deadlines. EPA believed that additional notice and comment were necessary to clarify the status of these sites. The information received during the notice and comment process and additional research, as discussed in section I.B.3 Construction Site Runoff, formed the basis for the designation of construction activity disturbing between one and five acres on a nationwide basis. EPA's objectives in today's proposal include an effort to (1) address the 9th Circuit remand, (2) address water quality concerns associated with construction activities that disturb less than 5 acres of land, and (3) balance conflicting recommendations and concerns of stakeholders.

One commenter noted that EPA's proposal would fail to regulate industrial facilities identified as Group A and Group B in the March 1995 *Report to Congress*. EPA is relying on the analysis in the Report, which provided that the recommendation for coverage was meant as guidance and was not intended to be an identification of specific categories that must be regulated under Section 402(p)(6). *Report to Congress*, p. 4-1. The Report recognized the existence of limited data on which to base loadings estimates to support the nationwide designation of individual or categories of sources. *Report to Congress*, p. 4-44. Furthermore, during FACA Subcommittee discussion, EPA continued to urge stakeholders to provide further data relating to industrial and commercial storm water sources, which EPA did not receive. EPA concluded that, due to insufficient

data, these sources were not appropriate for nationwide designation at this time.

#### *E. Industrial Facilities Owned or Operated by Small Municipalities*

Congress granted extensions to the NPDES permit application process for selected classes of storm water discharges associated with industrial activity. On December 18, 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA), which postponed NPDES permit application deadlines for most storm water discharges associated with industrial activity at facilities that are owned or operated by small municipalities. EPA and States authorized to administer the NPDES program could not require any municipality with a population of less than 100,000 to apply for or obtain an NPDES permit for any storm water discharge associated with industrial activity prior to October 1, 1992, except for storm water discharges from airports, power plants, or uncontrolled sanitary landfills. See 40 CFR 122.26(e)(1); 57 FR 11524, April 2, 1992 (reservation of NPDES application deadlines for ISTEA facilities).

The facilities exempted by ISTEA discharge storm water in the same manner (and are expected to use identical processes and materials) as the industrial facilities regulated under the 1990 Phase I regulations. Accordingly, these facilities pose similar water quality problems. The extended moratorium for these facilities was necessary to allow municipalities additional time to comply with NPDES requirements. The proposal for today's rule would have maintained the existing deadline for seeking coverage under an NPDES permit (August 7, 2001).

Today's rule changes the permit application deadline for such municipally owned or operated facilities discharging industrial storm water to make it consistent with the application date for small regulated MS4s. Because EPA missed its March 1999 deadline for promulgating today's rule, and the deadline for MS4s to submit permit applications has been extended to three years and 90 days from the date of this notice, the deadline for permitting ISTEA sources has been similarly extended. The permitting of these sources is discussed below in section "II.I.3. ISTEA Sources."

#### *F. Related Nonpoint Source Programs*

Today's rule addresses point source discharges of storm water runoff and non-storm water discharges into MS4s. Many of these sources have been addressed by nonpoint source control

programs, which are described briefly below.

In 1987, section 319 was added to the CWA to provide a framework for funding State and local efforts to address pollutants from nonpoint sources not addressed by the NPDES program. To obtain funding, States are required to submit Nonpoint Source Assessment Reports identifying State waters that, without additional control of nonpoint sources of pollution, could not reasonably be expected to attain or maintain applicable water quality standards or other goals and requirements of the CWA. States are also required to prepare and submit for EPA approval a statewide Nonpoint Source Management Program for controlling nonpoint source water pollution to navigable waters within the State and improving the quality of such waters. State program submittals must identify specific best management practices (BMPs) and measures that the State proposes to implement in the first four years after program submission to reduce pollutant loadings from identified nonpoint sources to levels required to achieve the stated water quality objectives.

State nonpoint source programs funded under section 319 can include both regulatory and nonregulatory State and local approaches. Section 319(b)(2)(B) specifies that a combination of "nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects" may be used, as necessary, to achieve implementation of the BMPs or measures identified in the section 319 submittals.

Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990 provides that States with approved coastal zone management programs must develop coastal nonpoint pollution control programs and submit them to EPA and the National Oceanic and Atmospheric Administration (NOAA) for approval. Failure to submit an approvable program will result in a reduction of Federal grants under both the Coastal Zone Management Act and section 319 of the CWA.

State coastal nonpoint pollution control programs under CZARA must include enforceable policies and mechanisms that ensure implementation of the management measures throughout the coastal management area. *EPA issued Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* under section 6217(g) in

January 1993. The guidance identifies management measures for five major categories of nonpoint source pollution. The management measures reflect the greatest degree of pollutant reduction that is economically achievable for each of the listed sources. These management measures provide reference standards for the States to use in developing or refining their coastal nonpoint programs. A few management measures, however, contain quantitative standards that specify pollutant loading reductions. For example, the New Development Management Measure, which is applicable to construction in urban areas, requires (1) that by design or performance the average annual total suspended solid loadings be reduced by 80 percent and (2) to the extent practicable, that the pre-development peak runoff rate and average volume be maintained.

EPA and NOAA published *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (1993). The document clarifies that States generally must implement management measures for each source category identified in the EPA guidance developed under section 6217(g). Coastal Nonpoint Pollution Control Programs are not required to address sources that are clearly regulated under the NPDES program as point source discharges. Specifically, such programs would not need to address small MS4s and construction sites covered under NPDES storm water permits (both general and individual).

## II. Description of Program

### A. Overview

#### 1. Objectives EPA Seeks To Achieve in Today's Rule

EPA seeks to achieve several objectives in today's final rule. First,

EPA is implementing the requirement under CWA section 402(p)(6) to provide a comprehensive storm water program that designates and controls additional sources of storm water discharges to protect water quality. Second, EPA is addressing storm water discharges from the activities exempted under the 1990 storm water permit application regulations that were remanded by the Ninth Circuit Court of Appeals in *NRDC v. EPA*, 966 F.2d 1292 (9th Circuit, 1992). These are construction activities disturbing less than 5 acres and so-called "light" industrial activities not exposed to storm water (see discussion of "no exposure" below). Third, EPA is providing coverage for the so-called "donut holes" created by the existing NPDES storm water program. Donut holes are geographic gaps in the NPDES storm water program's regulatory scheme. They are MS4s located within areas covered by the existing NPDES storm water program, but not currently addressed by the storm water program because it is based on political jurisdictions. Finally, EPA also is trying to promote watershed planning as a framework for implementing water quality programs where possible.

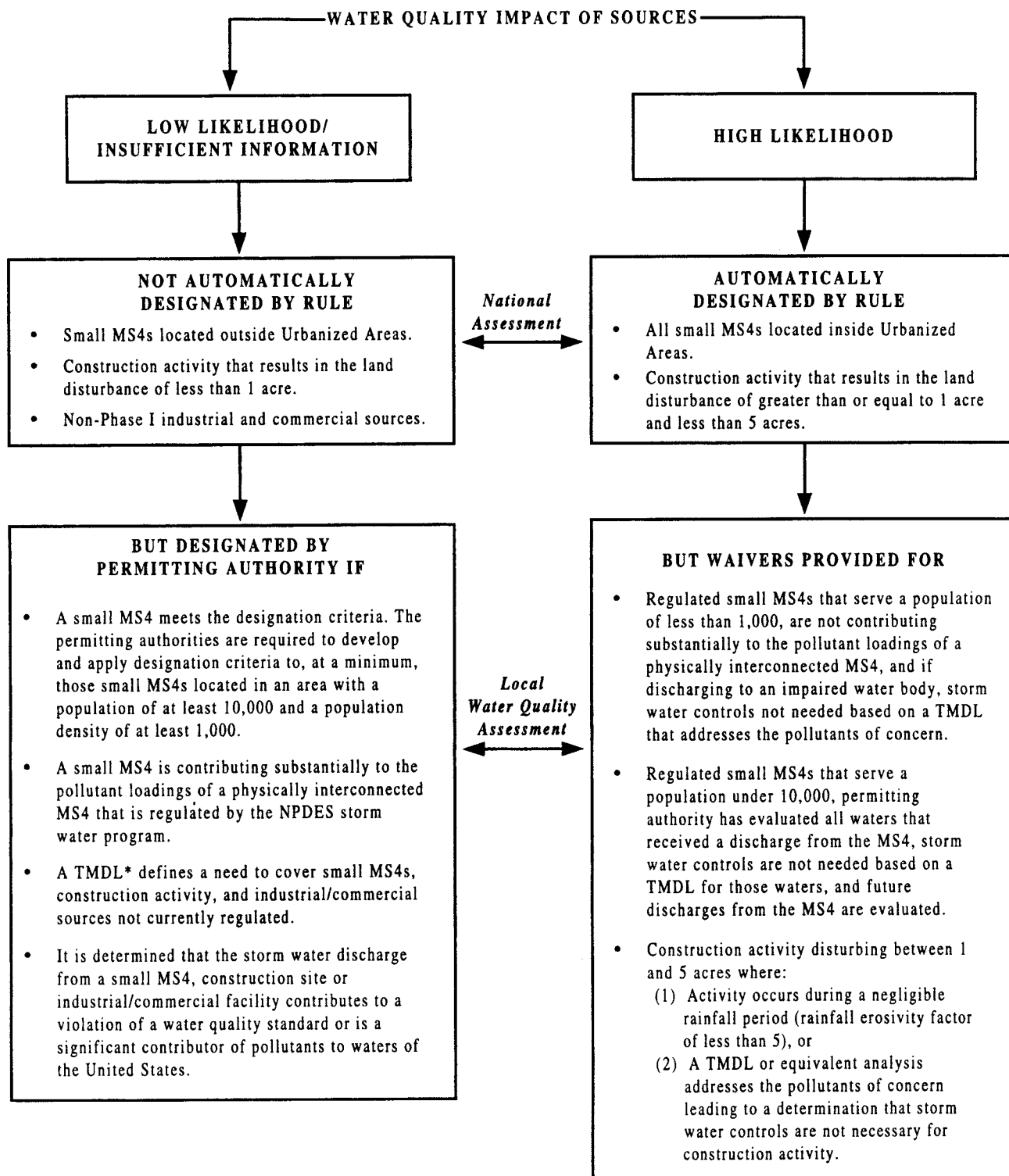
Although EPA had options for different approaches (see alternatives discussed in the January 9, 1998, proposed regulation), EPA believes it can best achieve its objectives through flexible innovations within the framework of the NPDES program. Unlike the interim section 402(p)(6) storm water regulations EPA promulgated in 1995, EPA no longer designates all of the unregulated storm water discharges for nationwide coverage under the NPDES program for storm water. The framework for today's final rule is one that balances automatic designation on a nationwide basis and

locally-based designation and waivers. Nationwide designation applies to those classes or categories of storm water discharges that EPA believes present a high likelihood of having adverse water quality impacts, regardless of location. Specifically, today's rule designates discharges from small MS4s located in urbanized areas and storm water discharges from construction activities that result in land disturbance equal to or greater than one and less than five acres. As noted under Section I.B., Water Quality Concerns/Environmental Impact Studies and Assessments, these two categories of storm water sources, when unregulated, tend to cause significant adverse water quality impacts. Additional sources are not covered on a nationwide basis either because EPA currently lacks information indicating a consistent potential for adverse water quality impact or because EPA believes that the likelihood of adverse impacts on water quality is low, with some localized exceptions. Additional individual sources or categories of storm water discharges could, however, be covered under the program through a local designation process. A permitting authority may designate additional small MS4s after developing designation criteria and applying those criteria to small MS4s located outside of an urbanized area, in particular those with a population of 10,000 or more and a population density of at least 1,000. Exhibit 1 illustrates the designation framework for today's final rule.

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## EXHIBIT 1.—PHASE II SOURCE DECISIONS



\*EPA will continue to require States to comply with their Total Maximum Daily Load (TMDL) implementation schedules.



The designation framework for today's final rule provides a significant degree of flexibility. The proposed provisions for nationwide designation of storm water discharges from construction and from small MS4s in urbanized areas allowed for a waiver of applicable requirements based on appropriate water quality conditions. Today's final rule expands and simplifies those waivers.

The permitting authority may waive the requirement for a permit for any small MS4 serving a jurisdiction with a population of less than 1,000 unless storm water controls are needed because the MS4 is contributing to a water quality impairment. The permitting authority may also waive permit coverage for MS4s serving a jurisdiction with a population of less than 10,000 if all waters that receive a discharge from the MS4 have been evaluated and discharges from the MS4 do not significantly contribute to a water quality impairment or have the potential to cause an impairment. Today's rule also allows States with a watershed permitting approach to phase in coverage for MS4s in jurisdictions with populations under 10,000.

Water quality conditions are also the basis for a waiver of requirements for storm water discharges from construction activities disturbing between one and five acres. For these small construction sources, the rule provides significant flexibility for waiving otherwise applicable regulatory requirements where a permitting authority determines, based on water quality and watershed considerations, that storm water discharge controls are not needed.

Coverage can be extended to municipal and construction sources outside the nationwide designated classes or categories based on watershed and case-by-case assessments. For the municipal storm water program, today's rule provides broad discretion to NPDES permitting authorities to develop and implement criteria for designating storm water discharges from small MS4s outside of urbanized areas. Other storm water discharges from unregulated industrial, commercial, and residential sources will not be subject to the NPDES permit requirements unless a permitting authority determines on a case-by-case basis (or on a categorical basis within identified geographic areas such as a State or watershed) that regulatory controls are needed to protect water quality. EPA believes that the flexibility provided in today's rule facilitates watershed planning.

## 2. General Requirements for Regulated Entities Under Today's Rule

As previously noted, today's final rule defines additional classes and categories of storm water discharges for coverage under the NPDES program. These designated dischargers are required to seek coverage under an NPDES permit. Furthermore, all NPDES-authorized States and Tribes are required to implement these provisions and make any necessary amendments to current State and Tribal NPDES regulations to ensure consistency with today's final rule. EPA remains the NPDES permitting authority for jurisdictions without NPDES authorization.

Today's final rule includes some new requirements for NPDES permitting authorities implementing the CWA section 402(p)(6) program. EPA has made a significant effort to build flexibility into the program while attempting to maintain an appropriate level of national consistency. Permitting authorities must ensure that NPDES permits issued to MS4s include the minimum control measures established under the program. Permitting authorities also have the ability to make numerous decisions including who is regulated under the program, i.e., case-by-case designations and waivers, and how responsibilities should be allocated between regulated entities.

Today's final rule extends the NPDES program to include discharges from the following: small MS4s within urbanized areas (with the exception of systems waived from the requirements by the NPDES permitting authority); other small MS4s meeting designation criteria to be established by the permitting authority; and any remaining MS4 that contributes substantially to the storm water pollutant loadings of a physically interconnected MS4 already subject to regulation under the NPDES program. Small MS4s include urban storm sewer systems owned by Tribes, States, political subdivisions of States, as well as the United States, and other systems located within an urbanized area that fall within the definition of an MS4. These include, for example, State departments of transportation (DOTs), public universities, and federal military bases.

Today's final rule requires all regulated small MS4s to develop and implement a storm water management program. Program components include, at a minimum, 6 minimum measures to address: public education and outreach; public involvement; illicit discharge detection and elimination; construction site runoff control; post-construction storm water management in new

development and redevelopment; and pollution prevention and good housekeeping of municipal operations. These program components will be implemented through NPDES permits. A regulated small MS4 is required to submit to the NPDES permitting authority, either in its notice of intent (NOI) or individual permit application, the BMPs to be implemented and the measurable goals for each of the minimum control measures listed above.

The rule addresses all storm water discharges from construction site activities involving clearing, grading and excavating land equal to or greater than 1 acre and less than 5 acres, unless requirements are otherwise waived by the NPDES permitting authority. Discharges from such sites, as well as construction sites disturbing less than 1 acre of land that are designated by the permitting authority, are required to implement requirements set forth in the NPDES permit, which may reference the requirements of a qualifying local program issued to cover such discharges.

The rule also addresses certain other sources regulated under the existing NPDES program for storm water. For municipally-owned industrial sources required to be regulated under the existing NPDES storm water program but exempted from immediate compliance by the Intermodal Surface Transportation Act of 1991 (ISTEA), the rule revises the existing deadline for seeking coverage under an NPDES permit (August 7, 2001) to make it consistent with the application date for small regulated MS4s. (See section I.3. below.) The rule also provides relief from NPDES storm water permitting requirements for industrial sources with no exposure of industrial materials and activities to storm water.

## 3. Integration of Today's Rule With the Existing Storm Water Program

In developing an approach for today's final rule, numerous early interested stakeholders encouraged EPA to seek opportunities to integrate, where possible, the proposed Phase II requirements with existing Phase I requirements, thus facilitating a unified storm water discharge control program. EPA believes that this objective is met by using the NPDES framework. This framework is already applied to regulated storm water discharge sources and is extended to those sources designated under today's rule. This approach facilitates program consistency, public access to information, and program oversight.

EPA believes that today's final rule provides consistency in terms of program coverage and requirements for existing and newly designated sources. For example, the rule includes most of the municipal donut holes, those MS4s located in incorporated places, townships or towns with a population under 100,000 that are within Phase I counties. These MS4s are not addressed by the existing NPDES storm water program while MS4s in the surrounding county are currently addressed. In addition, the minimum control measures required in today's rule for regulated small MS4s are very similar to a number of the permit requirements for medium and large MS4s under the existing storm water program. Following today's rule, permit requirements for all regulated MS4s (both those under the existing program and those under today's rule) will require implementation of BMPs. Furthermore, with regard to the development of NPDES permits to protect water quality, EPA intends to apply the August 1, 1996, *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits* (hereinafter, "Interim Permitting Approach") (see Section II.L.1. for further description) to all MS4s covered by the NPDES program.

EPA is applying NPDES permit requirements to construction sites below 5 acres that are similar to the existing requirements for those above 5 acres and above. In addition, today's rule allows compliance with qualifying local, Tribal, or State erosion and sediment controls to meet the erosion and sediment control requirements of the general permits for storm water discharges associated with construction, both above and below 5 acres.

#### 4. General Permits

EPA recommends using general permits for all newly regulated storm water sources under today's rule. The use of general permits, instead of individual permits, reduces the administrative burden on permitting authorities, while also limiting the paperwork burden on regulated parties seeking permit authorization. Permitting authorities may, of course, require individual permits in some cases to address specific concerns, including permit non-compliance.

EPA recommends that general permits for MS4s, in particular, be issued on a watershed basis, but recognizes that each permitting authority must decide how to develop its general permit(s). Permit conditions developed to address concerns and conditions of a specific watershed could reflect a watershed

plan; such permit conditions must provide for attainment of applicable water quality standards (including designated uses), allocations of pollutant loads established by a TMDL, and timing requirements for implementation of a TMDL. If the permitting authority issues a State-wide general permit, the permitting authority may include separate conditions tailored to individual watersheds or urbanized areas. Of course, for a newly regulated MS4, modification of an existing individual MS4 permit to include the newly regulated MS4 as a "limited co-permittee" also remains an option.

#### 5. Tool Box

During the FACA process, many Storm Water Phase II FACA Subcommittee representatives expressed an interest, which was endorsed by the full Committee, in having EPA develop a "tool box" to assist States, Tribes, municipalities, and other parties involved in the Phase II program. EPA made a commitment to work with Storm Water Phase II FACA Subcommittee representatives in developing such a tool box, with the expectation that a tool box would facilitate implementation of the storm water program in an effective and cost-efficient manner. EPA has developed a preliminary working tool box (available on EPA's web page at [www.epa.gov/owm/sw/toolbox](http://www.epa.gov/owm/sw/toolbox)). EPA intends to have the tool box fully developed by the time of the first general permits. EPA also intends to update the tool box as resources and data become available. The tool box will include the following eight main components: fact sheets; guidances; a menu of BMPs for the six MS4 minimum measures; an information clearinghouse; training and outreach efforts; technical research; support for demonstration projects; and compliance monitoring/assistance tools. EPA intends to issue the menu of BMPs, both structural and non-structural, by October 2000. In addition, EPA will issue by October 2000 a "model" permit and will issue by October 2001 guidance materials on the development of measurable goals for municipal programs.

In an attempt to avoid duplication, the Agency has undertaken an effort to identify and coordinate sources of information that relate to the storm water discharge control program from both inside and outside the Agency. Such information includes research and demonstration projects, grants, storm water management-related programs, and compendiums of available documents, including guidances, related

directly or indirectly to the comprehensive NPDES storm water program. Based on this effort, EPA is developing a tool box containing fact sheets and guidance documents pertaining to the overall program and rule requirements (e.g., guidance on municipal and construction programs, and permitting authority guidance on designation and waiver criteria); models of current programs aimed at assisting States, Tribes, municipalities, and others in establishing programs; a comprehensive list of reference documents organized according to subject area (e.g., illicit discharges, watersheds, water quality standards attainment, funding sources, and similar types of references); educational materials; technical research data; and demonstration project results. The information collected by EPA will not only provide the background for tool box materials, but will also be made available through an information clearinghouse on the world wide web.

With assistance from EPA, the American Public Works Association (APWA) developed a workbook and series of workshops on the proposed Phase II rule. Ten workshops were held from September 1998 through May 1999. Depending on available funding, these workshops may continue after publication of today's final rule. EPA also intends to provide training to enable regional offices to educate States, Tribes, and municipalities about the storm water program and the availability of the tool box materials.

The CWA currently provides funding mechanisms to support activities related to storm water. These mechanisms will be described in the tool box. Activities funded under grant and loan programs, which could be used to assist in storm water program development, include programs in the nonpoint source area, storm water demonstration projects, source water protection and wastewater construction projects. EPA has already provided funding for numerous research efforts in these areas, including a database of BMP effectiveness studies (described below), an assessment of technologies for storm water management, a study of the effectiveness of storm water BMPs for controlling the impacts of watershed imperviousness, protocols for wet weather monitoring, development of a dynamic model for wet weather flows, and numerous outreach projects.

EPA has entered into a cooperative agreement with the Urban Water Resources Research Council of the American Society of Civil Engineers (ASCE) to develop a scientifically-based management tool for the information

needed to evaluate the effectiveness of urban storm water runoff BMPs nationwide. The long-term goal of the National Stormwater BMP Database project is to promote technical design improvements for BMPs and to better match their selection and design to the local storm water problems being addressed. The project team has collected and evaluated hundreds of existing published BMP performance studies and created a database covering about 75 test sites. The database includes detailed information on the design of each BMP and its watershed characteristics, as well as its performance. Eventually the database will include the nationwide collection of information on the characteristics of structural and non-structural BMPs, data collection efforts (e.g., sampling and flow gaging equipment), climatological characteristics, watershed characteristics, hydrologic data, and constituent data. The database will continue to grow as new BMP data become available. The initial release of

the database, which includes data entry and retrieval software, is available on CD-ROM and operates on Windows®-compatible personal computers. The ASCE project team envisions that periodic updates to the database will be distributed through the Internet. The team is currently developing a system for Internet retrieval of selected database records, and this system is expected to be available in early 2000.

EPA and ASCE invite BMP designers, owners and operators to participate in the continuing database development effort. To make this effort successful, a large database is essential. Interested persons are encouraged to submit their BMP performance evaluation data and associated BMP watershed characteristics for potential entry into the database. The software included in the CD-ROM allows data providers to enter their BMP data locally, retain and edit the data as needed, and submit them to the ASCE Database Clearinghouse when ready.

To obtain a copy of the database, please contact Jane Clary, Database Clearinghouse Manager, Wright Water Engineers, Inc., 2490 W. 26th Ave., Suite 100A, Denver, CO 80211; Phone 303-480-1700; E-mail clary@wrightwater.com.

In addition, EPA requests that researchers planning to conduct BMP performance evaluations compile and collect BMP reporting information according to the standard format developed by ASCE. The format is provided with the database software and is also available on the ASCE website at [www.asce.org/peta/tech/nsbd01.html](http://www.asce.org/peta/tech/nsbd01.html).

#### 6. Deadlines Established in Today's Action

Exhibit 2 outlines the various deadlines established under today's final rule. EPA believes that the dates allow sufficient time for completion of both the NPDES permitting authority's and the permittee's program responsibilities.

#### EXHIBIT 2—STORM WATER PHASE II ACTIONS DEADLINES

Activity	Deadline date
NPDES-authorized States modify NPDES program if no statutory change is required.	1 year from date of publication of today's rule in the <b>Federal Register</b> .
NPDES-authorized States modify NPDES program if statutory change is required.	2 years from date of publication of today's rule in the <b>Federal Register</b> .
EPA issues a menu of BMPs for regulated small MS4s .....	October 27, 2000
ISTEA sources submit permit application .....	3 years and 90 days from date of publication of today's rule in the <b>Federal Register</b> .
Permitting authority issues general permit(s) (if this type of permit coverage is selected).	3 years from date of publication of today's rule in the <b>Federal Register</b> .
Regulated small MS4s submit permit application:	
a. If designated under § 122.32(a)(1) unless the permitting authority has established a phasing schedule under § 123.35(d)(3).	a. 3 years and 90 days from date of publication of today's rule in the <b>Federal Register</b> .
b. If designated under § 122.32(a)(2) or §§ 122.26(a)(9)(i) (C) or (D).	b. Within 180 days of notice.
Storm water discharges associated with small construction activity submit permit application:	
a. If designated under § 122.26(b)(15)(i) .....	a. 3 years and 90 days from date of publication of today's rule in the <b>Federal Register</b>
b. If designated under § 122.26(b)(15)(ii) .....	b. Within 180 days of notice.
Permitting authority designates small MS4s under § 123.35(b)(2) .....	3 years from date of publication of today's rule in the <b>Federal Register</b> or 5 years from date of publication of today's rule in the <b>Federal Register</b> if a watershed plan is in place
Regulated small MS4s' program fully developed and implemented .....	Up to 5 years from date of permit issuance.
Reevaluation of the municipal storm water rules by EPA .....	13 years from date of publication of today's rule in the <b>Federal Register</b>
Permitting authority determination on a petition .....	Within 180 days of receipt.
Non-municipal sources designated under § 122.26(a)(9)(i) (C) or (D) submit permit application.	Within 180 days of notice.
Submission of No Exposure Certification .....	Every 5 years.

#### B. Readable Regulations

Today, EPA is finalizing new regulations in a "readable regulation" format. This reader-friendly, plain language approach is a departure from traditional regulatory language and should enhance the rule's readability. These plain language regulations use

questions and answers, "you" to identify the person who must comply, and terms like "must" rather than "shall" to identify a mandate. This new format, which minimizes layers of subparagraphs, should also allow the reader to easily locate specific provisions of the regulation.

Some sections of today's final rule are presented in the traditional language and format because these sections amend existing regulations. The readable regulation format was not used in these existing provisions in an attempt to avoid confusion or disruption

of the readability of the existing regulations.

Most commenters supported EPA's use of plain language and agreed with EPA that the question and answer format makes the rule easier to understand. Three commenters thought that EPA should retain the traditional rule format. The June 1, 1998, Presidential memorandum directs all government agencies to write documents in plain language. Based on the majority of the comments, EPA has retained the plain language format used in the January 9, 1998, proposal in today's final rule.

The proposal to today's final rule included guidance as well as legal requirements. The word "must" indicates a requirement. Words like "should," "could," or "encourage" indicate a recommendation or guidance. In addition, the guidance was set off in parentheses to distinguish it from requirements.

EPA received numerous comments supporting the inclusion of guidance in the text of the Code of Federal Regulations (CFR), as well as comments opposing inclusion of guidance. Supporters stated that preambles and guidance documents are often not accessible when rules are implemented. Any language not included in the CFR is therefore not available when it may be most needed. Commenters that opposed including guidance in the CFR expressed the concern that any language in the rule might be interpreted as a requirement, in spite of any clarifying language. They suggested that guidance be presented in the preamble and additional guidance documents.

The majority of commenters on this issue thought that the guidance should be retained but the distinction between requirements and guidance should be better clarified. Suggestions included clarifying text, symbols, and a change from use of the word "should" to "EPA recommends" or "EPA suggests". EPA believes that it is important to include the guidance in the rule and agrees that the distinction between requirements and EPA recommendations must be very clear. In today's final rule, EPA has put the guidance in paragraphs entitled "Guidance" and replaced the word "should" with "EPA recommends." This is intended to clarify that the recommendations contained in the guidance paragraphs are not legally binding.

#### *C. Program Framework: NPDES Approach*

Today's rule regulates Phase II sources using the NPDES permit program. EPA interprets Clean Water

Act section 402(p)(6) as authorizing the Agency to develop a storm water program for Phase II sources either as part of the existing NPDES permit program or as a stand alone non-NPDES program such as a self-implementing rule. Under either approach, EPA interprets section 402(p)(6) as directing EPA to publish regulations that "regulate" the remaining unregulated sources, specifically to establish requirements that are federally enforceable under the CWA. Although EPA believes that it has the discretion to not require sources regulated under CWA section 402(p)(6) to be covered by NPDES permits, the Agency has determined, for the reasons discussed below, that it is most appropriate to use NPDES permits in implementing the program to address the sources designated for regulation in today's rule.

As discussed in Section II.A, Overview, EPA sought to achieve certain goals in today's final rule. EPA believes that the NPDES program best achieves EPA's goals for today's final rule for the reasons discussed below.

Requiring Phase II sources to be covered by NPDES permits helps address the consistency problems currently caused by municipal "donut holes." Donut holes are gaps in program coverage where a small unregulated MS4 is located next to or within a regulated larger MS4 that is subject to an NPDES permit under the Phase I NPDES storm water program. The existence of such "donut holes" creates an equity problem because similar discharges may remain unregulated even though they cause or contribute to the same adverse water quality impacts. Using NPDES permits to regulate the unregulated discharges in these areas is intended to facilitate the development of a seamless regulatory program for the mitigation and control of contaminated storm water discharges in an urbanized area. For example, today's rule allows a newly regulated MS4 to join as a "limited" co-permittee with a regulated MS4 by referencing a common storm water management program. Such cooperation should be further encouraged by the fact that the minimum control measures required in today's rule for regulated small MS4s are very similar to a number of the permit requirements for medium and large MS4s under the Phase I storm water program. The minimum control measures applicable to discharges from smaller MS4s are described with slightly more generality than under the Phase I permit application regulations for larger MS4s, thus enabling maximum flexibility for operators of

smaller MS4s to optimize efforts to protect water quality.

Today's rule also applies NPDES permit requirements to construction sites below 5 acres that are similar to the existing requirements for those 5 acres and above. In addition, the rule would allow compliance with qualifying local, Tribal, or State erosion and sediment controls to meet the erosion and sediment control requirements of the general permits for storm water discharges associated with construction, both above and below 5 acres.

Incorporating the CWA section 402(p)(6) program into the NPDES program capitalizes upon the existing governmental infrastructure for administration of the NPDES program. Moreover, much of the regulated community already understands the NPDES program and the way it works.

Another goal of the NPDES program approach is to provide flexibility in order to facilitate and promote watershed planning and sensitivity to local conditions. NPDES permits promote those goals in several ways. NPDES general permits may be used to cover a category of regulated sources on a watershed basis or within political boundaries. The NPDES permitting process provides a mechanism for storm water controls tailored on a case-by-case basis, where necessary. In addition, the NPDES permit requirements of a permittee may be satisfied by another cooperating entity. Finally, NPDES permits may incorporate the requirements of existing State, Tribal and local programs, thereby accommodating State and Tribes seeking to coordinate the storm water program with other programs, including those that focus on watershed-based nonpoint source regulation.

In promoting the watershed approach to program administration, EPA believes NPDES general permits can cover a category of dischargers within a defined geographic area. Areas can be defined very broadly to include political boundaries (e.g., county), watershed boundaries, or State or Tribal land.

NPDES permits generally require an application or a notice of intent (NOI) to trigger coverage. This information exchange assures communication between the permitting authority and the regulated community. This communication is critical in ensuring that the regulated community is aware of the requirements and the permitting authority is aware of the potential for adverse impacts to water quality from identifiable locations. The NPDES permitting process includes the public as a valuable stakeholder and ensures

that the public is included and information is made publicly available.

Another concern for EPA and several stakeholders was that the program ensure citizen participation. The NPDES approach ensures opportunities for citizen participation throughout the permit issuance process, as well as in enforcement actions. NPDES permits are also federally enforceable under the CWA.

EPA believes that the use of NPDES permits makes a significant difference in the degree of compliance with regulations in the storm water program. The NPDES program provides for public participation in the development, enforcement and revision of storm water management programs. Citizen suit enforcement has assisted in focusing attention on adverse water quality impacts on a localized, public priority basis. Citizens frequently rely on the NPDES permitting process and the availability of NOIs to track program implementation and help them enforce regulatory requirements.

NPDES permits are also advantageous to the permittee. The NPDES permit informs the permittee about the scope of what it is expected to be in compliance with the Clean Water Act. As explained more fully in EPA's April 1995 guidance, *Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits*, compliance with an NPDES permit constitutes compliance with the Clean Water Act (see CWA section 402(k)). In addition, NPDES permittees are excluded from duplicative regulatory regimes under the Resource Conservation and Recovery Act and the Comprehensive Emergency Response, Compensation and Liability Act under RCRA's exclusions to the definition of "solid waste" and CERCLA's exemption for "federally permitted releases."

EPA considered suggestions that the Agency authorize today's rule to be implemented as a self-implementing rule. This would be a regulation promulgated at the Federal, State, or Tribal level to control some or all of the storm water dischargers regulated under today's rule. Under this approach, a rule would spell out the specific requirements for dischargers and impose the restrictions and conditions that would otherwise be contained in an NPDES permit. It would be effective until modified by EPA, a State, or a Tribe, unlike an NPDES permit which cannot exceed a duration of five years. Some stakeholders believed that this approach would reduce the burden on the regulated community (e.g., by not requiring permit applications), and considerably reduce the amount of

additional paperwork, staff time and accounting required to administer the proposed permit requirements.

EPA is sensitive to the interest of some stakeholders in having a streamlined program that minimizes the burden associated with permit administration and maximizes opportunities for field time spent by regulatory authorities. Key provisions in today's rule address some of these concerns by promoting a streamlined approach to permit issuance by, for example, using general permits and allowing the incorporation of existing programs. By adopting the NPDES approach rather than a self-implementing rule, today's rule also allows for consistent regulation between larger MS4s and construction sites regulated under the existing storm water management rule and smaller sources regulated under today's rule.

EPA believes that it is most appropriate to use NPDES permits to implement a program to address the sources regulated by today's rule. In addition to the reasons discussed above, NPDES permits provide a better mechanism than would a self-implementing rule for tailoring storm water controls on a case-by-case basis, where necessary. One commenter reasoned this concern could be addressed by including provisions in the regulation that allow site-specific BMPs (i.e., case-by-case permits), suggesting storm water discharges that might require site-specific BMPs can be identified during the designation process of the regulatory authority. EPA believes that, in addition to its complexity, the commenter's approach lacks the other advantages of the NPDES permitting process.

A self-implementing rule would not ensure the degree of public participation that the NPDES permit process provides for the development, enforcement and revision of the storm water management program. A self-implementing rule also might not have provided the regulated community the "permit shield" under CWA section 402(k) that is provided by an NPDES permit. Based on all these considerations, EPA declined to adopt a self-implementing rule approach and adopted the NPDES approach.

Some State representatives sought alternative approaches for State implementation of the storm water program for Phase II sources. These State representatives asserted that a non-NPDES alternative approach best facilitated watershed management and avoided duplication and overlapping regulations. These representatives believed the NPDES approach would undercut State programs that had

developed storm water controls tailored to local watershed concerns. Finally, a number of commenters expressed the view that States implement a variety of programs not based on the CWA that are effective in controlling storm water, and that EPA should provide incentives for their implementation and improvement in performance.

Throughout the development of the rule, State representatives sought alternatives to the NPDES approach for State implementation of the storm water program for Phase II sources. Discussions focused on an approach whereby States could develop an alternative program that EPA would approve or disapprove based on identified criteria, including that the alternative non-NPDES program would result in "equivalent or better protection of water quality." The State representatives, however, were unable to propose or recommend criteria for gauging whether a program would provide equivalent protection. EPA also did not receive any suggestions for objective, workable criteria in response to the Agency's explicit request for specific criteria (by which EPA could objectively judge such programs) in the preamble to the proposed rule.

EPA evaluated several existing State initiatives to address storm water and found many cases where standards under State programs may be coordinated with the Federal storm water program. Where the NPDES permit is developed in coordination with State standards, there are opportunities to avoid duplication and overlapping requirements. Under today's rule, an NPDES permitting authority may include conditions in the NPDES permit that direct an MS4 to follow the requirements imposed under State standards, rather than the requirements of § 122.34(b). This is allowed as long as the State program at a minimum imposes the relevant requirements of § 122.34(b). Additional opportunities follow from other provisions in today's rule.

Seeking to further explore the feasibility of a non-NPDES approach, the Agency, after the proposal, had extensive discussions with representatives of a number of States. Discussions related specifically to possible alternatives for regulations of urban storm water discharges and MS4s specifically. The Agency also sought input on these issues from other stakeholders.

As a result of these discussions, many of the commenters provided input on issues such as: whether or not the Agency should require NPDES permits; whether location of MS4s in urbanized

areas should be the basis for designation or whether designation should be based on other determinations relating to water quality; whether States should be allowed to satisfy the conditions of the rule through the use of existing State programs; and issues concerning timing and resources for program implementation.

In response, today's rule still follows the regulatory scheme of the proposed rule, but incorporates additional flexibility to address some of the concerns raised by commenters.

In order to facilitate implementation by States that utilize a watershed permitting approach or similar approach (*i.e.*, based on a State's unified watershed assessments), today's rule allows States to phase in coverage for MS4s in jurisdictions with a population less than 10,000. Under such an approach, States could focus their resources on a rolling basis to assist smaller MS4s in developing storm water programs.

In addition, in response to concerns that the rule should not require permit coverage for MS4s that do not significantly contribute to water quality impairments, today's rule provides options for two waivers for small MS4s. The rule allows permitting authorities to exempt from the requirement for a permit any MS4 serving a jurisdiction with a population less than 1,000, unless the State determines that the MS4 must implement storm water controls because it is significantly contributing to a water quality impairment. A second waiver option applies to MS4s serving a jurisdiction with a population less than 10,000. For those MS4s, the State must determine that discharges from the MS4 do not significantly contribute to a water quality impairment, or have the potential for such an impairment, in order to provide the exemption. The State must review this waiver on a periodic basis no less frequently than once every five years.

Throughout the development of today's rule, commenters questioned whether the Clean Water Act authorized the use of the NPDES permit program, pointing out that the text of CWA 402(p)(6) does not use the word "permit." Based on the absence of the word "permit" and the express mention of State storm water management programs, the commenters asserted that Congress did not intend for Phase II sources to be regulated using NPDES permits.

EPA disagrees with the commenters' interpretation of section 402(p)(6). Section 402(p)(6) does not preclude use of permits as part of the

"comprehensive program" to regulate designated sources. The language provides EPA with broad discretion in the establishment of the "comprehensive program." Absence of the word "permit" (a term that the statute does not otherwise define) does not preclude use of a permit, which is a familiar and reasonably well understood regulatory implementation vehicle. First, section 402(p)(6) says that EPA must establish a comprehensive program that "shall, at a minimum, establish priorities, establish requirements for State stormwater management programs, and establish expeditious deadlines." The "at a minimum" language suggests that the Agency may, and perhaps should, develop a comprehensive program that does more than merely attend to these minimum criteria. Use of the term "at a minimum" preserves for the Agency broad discretion to establish a comprehensive program that includes use of NPDES permits.

Further, in the final sentence of the section, Congress included additional language to affirm the Agency's discretion. The final sentence clarifies that the Phase II program "may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate." Under existing CWA programs, performance standards, (effluent limitations) guidelines, management practices, and treatment requirements are typically implemented through NPDES or dredge and fill permits.

Although EPA believes that it had the discretion to not require permits, the Agency has determined that it is reasonable to interpret section 402(p)(6) to authorize permits. Moreover, for the reasons discussed above, the Agency believes that it is appropriate to use NPDES permits in implementing today's rule.

#### *D. Federal Role*

Today's final rule describes EPA's approach to expand the existing storm water program under CWA section 402(p)(6). As in all other Federal programs, the Federal government plays an integral role in complying with, developing, implementing, overseeing, and enforcing the program. This section describes EPA's role in the revised storm water program.

##### **1. Develop Overall Framework of the Program**

The storm water discharge control program under CWA section 402(p)(6) consists of the rule, tool box, and permits. EPA's primary role is to ensure

timely development and implementation of all components. Today's rule is a refinement of the first step in developing the program. EPA is fully committed to continuing to work with involved stakeholders on developing the tool box and issuing permits. As noted in today's rule, EPA will assess the municipal storm water program based on (1) evaluations of data from the NPDES municipal storm water program, (2) research concerning water quality impacts on receiving waters from storm water, and (3) research on BMP effectiveness. (Section II.H, Municipal Role, provides a more detailed discussion of this provision.)

EPA is planning to standardize minimum requirements for construction and post-construction BMPs in a new rulemaking under Title III of the CWA. While larger construction sites are already subject to NPDES permits (and smaller sites will be subject to permits pursuant to today's rule), the permits generally do not contain specific requirements for BMP design or performance. The permits require the preparation of storm water pollution prevention plans, but actual BMP selection and design is at the discretion of permittees, in conformance with applicable State and local requirements. Where there are existing State and local requirements specific to BMPs, they vary widely, and many jurisdictions do not have such requirements.

In developing these regulations, EPA intends to evaluate the inclusion of design and maintenance criteria as minimum requirements for a variety of BMPs used for erosion and sediment control at construction sites, as well as for permanent BMPs used to manage post-construction storm water discharges. The Agency plans to consider the merits and performance of all appropriate management practices (both structural and non-structural) that can be used to reduce adverse water quality impacts. EPA does not intend to require the use of particular BMPs at specific sites, but plans to assist builders and developers in BMP selection by publishing data on the performance to be expected by various BMP types. EPA would like to build upon the successes of some of the effective State and local storm water programs currently in place around the country, and to establish nation-wide criteria to support builders and local jurisdictions in appropriate BMP selection.

##### **2. Encourage Consideration of Smart Growth Approaches**

In the proposal, EPA invited comment on possible approaches for providing

incentives for local decision making that would limit the adverse impacts of growth and development on water quality. EPA asked for comments on this "smart growth" approach.

EPA received comments on all sides of this issue. A number of commenters supported the idea of "smart growth" incentives but did not present concrete ideas. Several commenters suggested "smart growth" criteria. States that have adopted "smart growth" laws were worried that EPA's focus on urbanized areas for municipal requirements could encourage development outside of designated growth areas. Today's final rule clearly allows States to expand coverage of their municipal storm water program outside of urbanized areas. In addition, the flexibility of the six municipal minimum measures should avoid encouragement of development into rural rather than urban areas. For example, as part of the post-construction minimum measure, EPA recommends that municipalities consider policies and ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure, in order to meet the measure's intent.

EPA also received several comments expressing concern that incorporating "smart growth" incentives threatened the autonomy of local governments. One commenter was worried that "incentives" could become more onerous than the minimum measures. EPA is very aware of municipal concerns about possible federal interference with local land use planning. EPA is also cognizant of the difficulty surrounding incentives for "smart growth" activities due to these concerns. However, the Agency believes it has addressed these concerns by proposing a flexible approach and will continue to support the concept of "smart growth" by encouraging policies that limit the adverse impacts of growth and development on water quality.

### 3. Provide Financial Assistance

Although Congress has not established a fund to fully finance implementation of the proposed extension of the existing NPDES storm water program under CWA section 402(p)(6), numerous federal financing programs (administered by EPA and other federal agencies) can provide some financial assistance. The primary funding mechanism is the Clean Water State Revolving Fund (SRF) program, which provides sources of low-cost financing for a range of water quality infrastructure projects, including storm water. In addition to the SRF, federal financial assistance programs include

the Water Quality Cooperative Agreements under CWA section 104(b)(3), Water Pollution Control Program grants to States under CWA section 106, and the Transportation Equity Act for the 21st Century (TEA-21) among others. In addition, Section 319 funds may be used to fund any urban storm water activities that are not specifically required by a draft or final NPDES permit. EPA will develop a list of potential funding sources as part of the tool box implementation effort. EPA anticipates that some of these programs will provide funds to help develop and, in limited circumstances, implement the CWA section 402(p)(6) storm water discharge control program.

EPA received numerous comments that requested additional funding. Congress provided one substantial new source of potential funding for transportation related storm water projects—TEA-21. The Department of Transportation has included a number of water-related provisions in its TEA-21 planning. These include Transportation Enhancements, Environmental Restoration and Pollution Abatement, and Environmental Streamlining. More information on TEA-21 is available at the following internet sites: [www.fhwa.dot.gov/tea21/outreach.htm](http://www.fhwa.dot.gov/tea21/outreach.htm) and [www.tea21.org](http://www.tea21.org).

### 4. Implement the Program in Jurisdictions Not Authorized To Administer the NPDES Program

Because today's final rule uses the NPDES framework, EPA will be the NPDES permitting authority in several States, Tribal jurisdictions, and Territories. As such, EPA will have the same responsibilities as any other NPDES permitting authority—issuing permits, designating additional sources, and taking appropriate enforcement actions—and will seek to tailor the storm water discharge control program to the specific needs in that State, Tribal jurisdiction, or Territory. EPA also plans to provide support and oversight, including outreach, training, and technical assistance to the regulated communities. Section II.G. of today's preamble provides a separate discussion related to the NPDES permitting authority's responsibilities for today's final rule.

### 5. Oversee State and Tribal Programs

Under the NPDES program, EPA plays an oversight role for NPDES-approved States and Tribes. In this role, EPA and the State or Tribe work together to implement, enforce, and improve the NPDES program. Part of this oversight role includes working with States and

Tribes to modify their programs where programmatic or implementation concerns impede program effectiveness. This role will be vitally important when States and Tribes make adjustments to develop, implement, and enforce today's extension of the existing NPDES storm water discharge control program. In addition, States maintain a continuing planning process (CPP) under CWA section 303(e), which EPA periodically reviews to assess the program's achievements.

In its oversight role, EPA takes action to address States and Tribes who have obtained NPDES authorization but are not fulfilling their obligations under the NPDES program. If an NPDES-authorized State or Tribe fails to implement an adequate NPDES storm water program, for example, EPA typically enters into extensive discussions to resolve outstanding issues. EPA has the authority to withdraw the entire NPDES program when resolution cannot be reached. Partial program withdrawal is not provided for under the CWA except for partial approvals.

EPA is also working with the States and Tribes to improve nonpoint source management programs and assessments to incorporate key program elements. Key nonpoint source program elements include setting short and long term goals and objectives; establishing public and private partnerships; using a balanced approach incorporating Statewide and watershed-wide abatement of existing impairments; preventing future impairments; developing processes to address both impaired and threatened waters; reviewing and upgrading all program components, including program revisions on a 5-year cycle; addressing federal land management and activities inconsistent with State programs; and managing State nonpoint source management programs effectively.

In particular, EPA works with the States and Tribes to strengthen their nonpoint source pollution programs to address all significant nonpoint sources, including agricultural sources, through the CWA section 319 program. EPA is working with other government agencies, as well as with community groups, to effect voluntary changes regarding watershed protection and reduced nonpoint source pollution.

In addition, EPA and NOAA have published programmatic and technical guidance to address coastal nonpoint source pollution. Under Section 6217 of the CZARA, States are developing and implementing coastal nonpoint pollution control programs approved by EPA and NOAA.



## 6. Comply With Applicable Requirements as a Discharger

Today's final rule covers federally operated facilities in a variety of ways. These facilities are generally areas where people reside, such as a federal prison, hospital, or military base. It also includes federal parkways and road systems with separate storm sewer systems. Today's rule requires federal MS4s to comply with the same application deadlines that apply to regulated small MS4s generally. EPA believes that all federal MS4s serve populations of less than 100,000.

EPA received several comments that asked if individual buildings like post offices are considered to be small MS4s and thereby regulated in today's rule if they are in an urbanized area. Most of these buildings have at most a parking lot with runoff or a storm sewer that connects with a municipality's MS4. EPA does not intend that individual federal buildings be considered to be small MS4s. This is discussed in section II.H.2.b. of today's preamble.

Federal facilities can also be included under requirements addressing storm water discharges associated with small construction activities. In any case, discharges from these facilities will need to comply with all applicable NPDES requirements and any additional water quality-related requirements imposed by a State, Tribal, or local government. Failure to comply can result in enforcement actions. Federal facilities can act as models for municipal and private sector facilities and implement or test state-of-the-art management practices and control measures.

### E. State Role

Today's final rule sets forth an NPDES approach for implementing the extension of the existing storm water discharge control program under CWA section 402(p)(6). State assumption of the NPDES program is voluntary, consistent with the principles of federalism. Because most States are approved to implement the NPDES program, they will tailor their storm water discharge control programs to address their water quality needs and objectives. While today's rule establishes the basic framework for the section 402(p)(6) program, States as well as Tribes (see discussion in section II.F) have an important role in fine-tuning the program to address the water quality issues within their jurisdictions. The basic framework allows for adjustments based on factors that vary geographically, including climate patterns and terrain.

Where States do not have NPDES authority, they are not required to implement the storm water discharge control program, but they may still participate in water quality protection through participation in the CWA section 401 certification process (for any permits) and through development of water quality standards and TMDLs.

### 1. Develop the Program

In expanding the existing NPDES program for storm water discharges, States must evaluate whether revisions to their NPDES programs are necessary. If so, modifications must be made in accordance with § 123.62. Under § 123.62, States must revise their NPDES programs within 1 year, or within 2 years if statutory changes are necessary.

Some States and departments of transportation (DOTs) commented that this timeframe is too short, anticipating that the State legislative process and the modification of regulations combined would take beyond 2 years. The deadline language in § 123.62 is not new language for the storm water discharge control program; it applies to all NPDES programs. EPA believes the vast majority of States will meet the deadline and will work with States in those cases where there may be difficulty meeting this deadline due to the timing of legislative sessions and the regulatory development process.

An authorized State NPDES program must meet the requirements of CWA section 402(b) and conform to the guidelines issued under CWA section 304(i)(2). Today's final rule under § 123.25 adds specific cross references to the storm water discharge control program components to ensure that States adequately address these requirements.

### 2. Comply With Applicable Requirements as a Discharger

Today's final rule covers State operated separate storm sewer systems in a variety of ways. These systems generally drain areas where people reside, such as a prison, hospital, or other populated facility. These systems are included under the definition of a regulated small MS4, which specifically identifies systems operated by State departments of transportation. Alternatively, storm water discharges from State activities may be regulated under the section addressing storm water discharges associated with small construction activities. In any case, discharges from these facilities must comply with all applicable NPDES requirements. Failure to comply can result in enforcement actions. State facilities can act as models for

municipal and private sector facilities and implement or test state-of-the-art management practices and control measures.

### 3. Communicate With EPA

Under approved NPDES programs, States have an ongoing obligation to share information with EPA. This dialogue is particularly important in the CWA section 402(p)(6) storm water program where these governments continue to develop a great deal of the guidance and outreach related to water quality.

### F. Tribal Role

The proposal to today's final rule provides background information on EPA's 1984 Indian Policy and the criteria for treatment of an Indian Tribe in the same manner as a State. Today's final rule extends the existing NPDES program for storm water discharges to two types of dischargers located in Indian country. First, the final rule designates storm water discharges from any regulated small MS4, including Tribal systems. Second, the final rule regulates discharges associated with construction activity disturbing between one and five acres of land, including sites located in Indian country. Operators in each of these categories of regulated activity must apply for coverage under an NPDES permit by 3 years and 90 days from the date of publication of today's final rule. Under existing regulations, however, EPA or an authorized NPDES Tribe may require a specified storm water discharger to apply for NPDES permit coverage before this deadline based on a determination that the discharge is contributing to a violation of a water quality standard (including designated uses) or is a significant contributor of pollutants.

Under today's rule, a Tribal governmental entity may regulate storm water discharges on its reservation in two ways—as either an NPDES-authorized Tribe or as a regulated MS4. If a Tribe is authorized to operate the NPDES program, the Tribe must implement today's final rule for the NPDES program for storm water for covered dischargers located within the EPA recognized boundaries. Otherwise, EPA is generally the permitting/program authority within Indian country. Discussions about the State Role in the preceding section also apply to NPDES authorized Tribes. For additional information on the role and responsibilities of the permitting authority in the NPDES storm water program, see § 123.35 (and Section II.G. of today's preamble) and § 123.25(a).



Under today's final rule, if the Indian reservation is located entirely or partially within an "urbanized area," as defined in § 122.32(a)(1), the Tribe must obtain an NPDES permit if it operates a small MS4 within the urbanized area portion. Tribal MS4s located outside an urbanized area are not automatically covered, but may be designated by EPA pursuant to § 122.32(a)(2) of today's rule or may request designation as a regulated small MS4 from EPA. A Tribe that is a regulated MS4 for NPDES program purposes is required to implement the six minimum control measures to the extent allowable under Federal law.

The Tribal representative on the Storm Water Phase II FACA Subcommittee asked EPA to provide a list of the Tribes located in urbanized areas that would fall within the NPDES storm water program under today's final rule. In December 1996, EPA developed a list of federally recognized American Indian Areas located wholly or partially in Bureau of the Census-designated urbanized areas (see Appendix 1). Appendix 1 not only provides a listing of reservations and individual Tribes, but also the name of the particular urbanized area in which the reservation is located and an indication of whether the urbanized area contains a medium or large MS4 that is already covered by the existing Phase I regulations.

Some of the Tribes listed in Appendix 1 are only partially located in an urbanized area. If the Tribe's MS4 serves less than 1,000 people within an urbanized area, the permitting authority may waive the Tribe's MS4 storm water requirements if it meets the conditions of § 122.32(c). EPA does not have information on the Tribal populations within the urbanized areas, so it can not identify the Tribes that are eligible for a waiver. Therefore, a Tribe that believes it qualifies for a waiver should contact its permitting authority.

#### *G. NPDES Permitting Authority's Role for the NPDES Storm Water Small MS4 Program*

As noted previously, the NPDES permitting authority can be EPA or an authorized State or an authorized Tribe. The following discussion describes the role of the NPDES permitting authority under today's final rule.

#### **1. Comply With Implementation Requirements**

NPDES permitting authorities must perform certain duties to implement the NPDES storm water municipal program. Section 123.35(a) of today's final rule emphasizes that permitting authorities have existing obligations under the

NPDES program. Section 123.35 focuses on specific issues related to the role of the NPDES authority to support administration and implementation of the municipal storm water program under CWA section 402(p)(6).

#### **2. Designate Sources**

Section 123.35(b) of today's final rule addresses the requirements for the NPDES permitting authority to designate sources of storm water discharges to be regulated under §§ 122.32 through 122.36. NPDES permitting authorities must develop a process, as well as criteria, to designate small MS4s. They must also have the authority to designate a small MS4 if and when circumstances that support a waiver under § 122.32(c) change. EPA may make designations if an NPDES-approved State or Tribe fails to do so.

NPDES permitting authorities must examine geographic jurisdictions that they believe should be included in the storm water discharge control program but are not located in an "urbanized area". Small MS4s in these areas are not designated automatically. Discharges from such areas should be brought into the program if found to have actual or potential exceedances of water quality standards, including impairment of designated uses, or other adverse impacts on water quality, as determined by local conditions or watershed and TMDL assessments. EPA's aim is to address discharges to impaired waters and to protect waters with the potential for problems. EPA encourages NPDES permitting authorities, local governments, and the interested public to work together in the context of a watershed plan to address water quality issues, including those associated with municipal storm water runoff.

EPA received comments stating that the process of developing criteria and applying it to all MS4s outside an urbanized area serving a population of 10,000 or greater and with a density of 1,000 people per square mile is too time-consuming and resource-intensive. These commenters believe that the permitting authority should decide which MS4s must be brought into the storm water discharge control program and that population and density should not be an overriding criteria. One suggested way of doing so was to only designate MS4s with demonstrated contributions to the impairment of water quality uses as shown by a TMDL. EPA disagrees with this suggestion. The TMDL process is time-consuming. MS4s outside of urbanized areas may cause water quality problems long before a TMDL is completed.

EPA believes that permitting authorities should consider the potential water quality impacts of storm water from all jurisdictions with a population of 10,000 or greater and a density of 1,000 people per square mile. EPA is using data summarized in the NURP study and in the CWA section 305(b) reports to support this approach for targeted designation outside of urbanized areas. EPA is not mandating which criteria are to be used, but has provided examples of criteria that may be useful in evaluating potential water quality impacts. EPA believes that the flexibility provided in this section of today's final rule allows the permitting authority to develop criteria and a designation process that is easy to use and protects water quality. Therefore, the provisions of § 123.35(b) remain as proposed.

#### **a. Develop Designation Criteria**

Under § 123.35(b), the NPDES permitting authority must establish designation criteria to evaluate whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including adverse habitat and biological impacts.

EPA recommends that NPDES permitting authorities consider, in a balanced manner, certain locally-focused criteria for designating any MS4 located outside of an urbanized area on the basis of significant water quality impacts. EPA recommends consideration of criteria such as discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contribution of pollutants to waters of the United States, and ineffective control of water quality concerns by other programs. These suggested designation criteria are intended to help encourage the permitting authority to use an objective method for identifying and designating, on a local basis, sources that adversely impact water quality. More information about these criteria and the reasons why they are suggested by EPA is included in the January 9, 1998, proposal (63 FR 1561) for today's final rule.

The suggested criteria are meant to be taken in the aggregate, with a great deal of flexibility as to how each should be weighed in order to best account for watershed and other local conditions and to allow for a more tailored case-by-case analysis. The application of criteria is meant to be geographically specific. Furthermore, each criterion does not have to be met in order for a small MS4

to qualify for designation, nor should an MS4 necessarily be designated on the basis of one or two criteria alone.

EPA believes that the application of the recommended designation criteria provides an objective indicator of real and potential water quality impacts from urban runoff on both the local and watershed levels. EPA encourages the application of the recommended criteria in a watershed context, thereby allowing for the evaluation of the water quality impacts of the portions of a watershed outside of an urbanized area. For example, situations exist where the urbanized area represents a small portion of a degraded watershed, and the adjacent nonurbanized areas of the watershed have significant cumulative effects on the quality of the receiving waters.

EPA received numerous suggestions of additional criteria that should be added and reasons why some of the criteria in the proposal to today's final rule were not appropriate. EPA developed its suggested designation criteria based on findings of the NURP study and other studies that indicate pollutants of concern, including total suspended solids, chemical oxygen demand, and temperature. These criteria were the subject of considerable discussion by the Storm Water Phase II FACA Subcommittee. EPA developed them in response to recommendations from the subcommittee during development of the proposed rule. The listed criteria are only suggestions. Permitting authorities are required to develop their own criteria. EPA has not found any reason to change its suggested list of criteria and the suggestions remain as proposed.

#### b. Apply Designation Criteria

After customizing the designation criteria for local conditions, the permitting authority must apply such criteria, at a minimum, to any MS4 located outside of an urbanized area serving a jurisdiction with a population of at least 10,000 and a population density of 1,000 people per square mile or greater (see § 123.35(b)(2)). If the NPDES permitting authority determines that an MS4 meets the criteria, the permitting authority must designate it as a regulated small MS4. This designation must occur within 3 years of publication of today's final rule. Alternatively, the NPDES authority can designate within 5 years from the date of final regulation if the designation criteria are applied on a watershed basis where a comprehensive watershed plan exists (a comprehensive watershed plan is one that includes the equivalents of TMDLs) (see § 123.35(b)(3)). The extended 5 year

deadline is intended to provide incentives for watershed-based designations. If an NPDES-authorized State or Tribe does not develop and apply designation criteria within this timeframe, then EPA has the opportunity to do so in lieu of the authorized State or Tribe.

NPDES permitting authorities can designate any small MS4, including one below 10,000 in population and 1,000 in density. EPA established the 10,000/1,000 threshold based on the likelihood of adverse water quality impacts at these population and density levels. In addition, the 1,000 persons per square mile threshold is consistent with both the Bureau of the Census definition of an "urbanized area" (see Section II.H.2. below) and stakeholder discussions concerning the definition of a regulated small MS4.

One commenter requested that EPA develop interim deadlines for development of designation criteria. EPA believes that the designation deadline identified in today's final rule at § 123.35(b)(3) provides States and Tribes with a flexibility that allows them to develop and apply the criteria locally in a timely fashion, while at the same time establishing an expeditious deadline.

#### c. Designate Physically Interconnected Small MS4s

In addition to applying criteria on a local basis for potential designation, the NPDES permitting authority must designate any MS4 that contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the NPDES program for storm water discharges (see § 123.35(b)(4)). To be "physically interconnected," the MS4 of one entity, including roads with drainage systems and municipal streets, is physically connected directly to the municipal separate storm sewer of another entity. This provision applies to all MS4s located outside of an urbanized area. EPA added this section in recognition of the concerns of local government stakeholders that a local government should not have to shoulder total responsibility for a storm water program when storm water discharges from another MS4 are also contributing pollutants or adversely affecting water quality. This provision also helps to provide some consistency among MS4 programs and to facilitate watershed planning in the implementation of the NPDES storm water program. EPA recommended physical interconnectedness in the existing NPDES storm water regulations as a

factor for consideration in the designation of additional sources.

Today's final rule does not include interim deadlines for identifying physically interconnected MS4s. However, consistent with the deadlines identified in § 123.35(b)(3) of today's final rule, EPA encourages the permitting authority to make these determinations within 3 years from the date of publication of the final rule or within 5 years if the permitting authority is implementing a comprehensive watershed plan. Alternatively, the affected jurisdiction could use the petition process under 40 CFR 122.26(f) in seeking to have the permitting authority designate the contributing jurisdiction.

Several commenters expressed concerns about who could be designated under this provision (§ 123.35(b)(4)). One commenter requested that the word "substantially" be deleted from the rule because they believe any MS4 that contributes at all to a physically interconnected municipal separate storm sewer should be regulated. EPA believes that the word "substantially" provides necessary flexibility to the permitting authorities. The permitting authority can decide if an MS4 is contributing discharges to another municipal separate storm sewer in a manner that requires regulation. If the operator of a regulated municipal separate storm sewer believes that some of its pollutant loadings are coming from an unregulated MS4, it can petition the permitting authority to designate the unregulated MS4 for regulation.

#### d. Respond to Public Petitions for Designation

Today's final rule reiterates the existing opportunity for the public to petition the permitting authority for designation of a point source to be regulated to protect water quality. The petition opportunity also appears in existing NPDES regulations at 40 CFR 122.26(f). Any person may petition the permitting authority to require an NPDES permit for a discharge composed entirely of storm water that contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States (see § 123.32(b)). The NPDES permitting authority must make a final determination on any petition within 180 days after receiving the petition (see § 123.35(c)). EPA believes that a 180 day limit balances the public's need for a timely final determination with the NPDES permitting authority's need to prioritize its workload. If an NPDES-approved State or Tribe fails to act

within the 180-day timeframe, EPA may make a determination on the petition. EPA believes that public involvement is an important component of the NPDES program for storm water and feels that this provision encourages public participation. Section II.K, Public Involvement/Public Role, further discusses this topic.

### 3. Provide Waivers

Today's rule provides two opportunities for the NPDES permitting authority to exempt certain small MS4s from the need for a permit based on water quality considerations. See §§ 122.32(d) and (e). The two waiver opportunities have different size thresholds and take different approaches to considering the water quality impacts of discharges from the MS4.

In the proposal, EPA requested comment on the option of waiving coverage for all MS4s with less than 1,000 people unless the permitting authority determined that the small MS4 should be regulated based on significant adverse water quality impacts. A number of commenters supported this option. They expressed concern that compliance with the rule requirements and certification of one of the waiver provisions were both costly for very small communities. They stated that the permitting authority should identify a water quality problem before requiring compliance. Today's rule essentially adopts this alternative approach for MS4s serving a population under 1,000.

The final rule has expanded the waiver provision that EPA proposed for small MS4s with a population less than 1,000. The proposed rule would have required a small MS4 operator to certify that storm water controls are not needed based on either wasteload allocations that are part of TMDLs that address the pollutants of concern, or a comprehensive watershed plan implemented for the waterbody that includes the equivalents of TMDLs and addresses the pollutant(s) of concern. Commenters noted that the proposed waivers would be unattainable if a TMDL or equivalent analysis was required for every pollutant that could possibly be present in any amount in discharges from an MS4 regardless of whether the pollutant is causing water quality impairment. Commenters asked that EPA identify what constitutes the "pollutant(s) of concern" for which a TMDL or its equivalent must be developed. For example, § 122.30(c) indicates that the MS4 program is intended to control "sediment, suspended solids, nutrients, heavy

metals, pathogens, toxins, oxygen-demanding substances, and floatables." Commenters asked whether TMDLs or equivalent analyses have to address all of these.

EPA has revised the proposed waiver in response to these concerns. Under today's rule, NPDES permitting authorities may waive the requirements of today's rule for any small MS4 with a population less than 1,000 that does not contribute substantially to the pollutant loadings of a physically interconnected MS4, unless the small MS4 discharges pollutants that have been identified as a cause of impairment of the waters to which the small MS4 discharges. If the small MS4 does discharge pollutants that have been identified as impairing the water body into which the small MS4 discharges, the NPDES permitting authority may grant a waiver only if it determines that storm water controls are not needed based on an EPA approved or established TMDL that addresses the pollutant(s) of concern.

Unlike the proposed rule, § 122.32(d) does not allow the waiver for MS4s serving a population under 1,000 to be based on "the equivalent of a TMDL." Because § 122.32(d) requires a pollutant specific analysis only for a pollutant that has been identified as a cause of impairment, a TMDL is required for such pollutant before the waiver may be granted. Once a pollutant has been identified as the cause of impairment of a water body, the State should develop a TMDL for that pollutant for that water body. Thus, § 122.32(d) takes a different approach than that taken for the waiver in § 122.32(e) for MS4s serving a population under 10,000, which can be based upon an analysis that is "the equivalent of a TMDL." This is because § 122.32(d) requires an analysis to support the waiver for MS4s under 1,000 only if a waterbody to which the MS4 discharges has been identified as impaired. The § 122.32(e) waiver, on the other hand, would be available for larger MS4s but only after the State affirmatively establishes lack of impairment based upon a comprehensive analysis of smaller urban waters that might not otherwise be evaluated for the purposes of CWA section 303. Since § 122.32(e) requires the analysis of waters that have not been identified as impaired, an actual TMDL is not required and an analysis that is the equivalent of a TMDL can suffice to support the waiver.

Where a State is the NPDES permitting authority, the permitting authority is responsible for the development of the TMDLs as well as the assessment of the extent to which a

small MS4's discharge contributes pollutants to a neighboring regulated system. In States where EPA is the permitting authority, EPA will use a State's TMDLs to determine whether storm water controls are required for the small MS4s.

The proposed rule would have required the operator of the small MS4 serving a population under 1,000 to certify that its discharge was covered under a TMDL that indicated that discharges from its particular system were not having an adverse impact on water quality (*i.e.*, it was either not assigned wasteload allocations under TMDLs or its discharge is within an assigned allocation). Many commenters expressed concerns that MS4 operators serving less than 1,000 persons may lack the technical capacity to certify that their discharges are not contributing to adverse water quality impacts. These commenters thought that the permitting authority should make such a certification. Today's rule provides flexibility as to how the waiver is administered. Permitting authorities are ultimately responsible for granting the waiver, but are free to determine whether or not to require small MS4 operators that are seeking waivers to submit information or a written certification.

Under § 122.32(e) a State may grant a waiver to an MS4 serving a population between 1,000 and 10,000 only if the State has made a comprehensive effort to ensure that the MS4 will not cause or contribute to water quality impairment. To grant a § 122.32(e) waiver, the NPDES permitting authority must evaluate all waters of the U.S. that receive a discharge from the MS4 and determine that storm water controls are not needed. The permitting authority's evaluation must be based on wasteload allocations that are part of an EPA approved or established TMDL or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern. The pollutants of concern that the permitting authority must evaluate include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4. Finally, the permitting authority must have determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant

water quality impacts, including habitat and biological impacts.

Although EPA did not propose this specific approach, the Agency did request comment on whether to increase the proposed 1,000 population threshold for a waiver. The § 122.32(e) waiver was developed in response to comments, including States' concerns that they needed greater flexibility to focus their efforts on MS4s that were causing water quality impairment. Several commenters thought that the threshold should be increased from 1,000 to 5,000 or 10,000. Others suggested additional ways of qualifying for a waiver for MS4s that discharge to waters that are not covered by a TMDL or watershed plan. EPA carefully considered all the options for expanding the waiver provisions and has decided to expand the waiver only in the very narrow circumstances described above where a comprehensive analysis has been undertaken to demonstrate that the MS4 is not causing water quality impairment.

The NPDES permitting authority can, at any time, mandate compliance with program requirements from a previously waived small MS4 if circumstances change. For example, a waiver can be withdrawn in circumstances where the permitting authority later determines that a waived small MS4's storm water discharge to a small stream will cause adverse impacts to water quality or significantly interfere with attainment of water quality standards. A "change in circumstances" could involve receipt of new information. Changed circumstances can also allow a regulated small MS4 operator to request a waiver at any time.

Some commenters expressed concerns about allowing any small MS4 waivers. One commenter stated that storm water pollution prevention plans are necessary to control storm water pollution and should be required from all regulated small MS4s. For the reasons stated in the Background section above, EPA agrees that the discharges from most MS4s in urbanized areas should be addressed by a storm water management program outlined in today's rule. For MS4s serving very small areas, however, the TMDL development process provides an opportunity to determine whether an MS4 serving a population less than 1,000 is having a negative impact on any receiving water that is impaired by a pollutant that the MS4 discharges. MS4s serving populations up to 10,000 may receive a waiver only if a comprehensive analysis of its impact on receiving water has been performed.

Other commenters said that waivers should not be allowed for small MS4s that discharge into another regulated MS4. These commenters stated that the word "substantially" should be removed from § 122.32(d)(i) so that a waiver would not be allowed for any system "contributing to the storm water pollutant loadings of a physically interconnected regulated MS4." As previously mentioned under the designation discussion of section II.G.2.c, EPA believes that the word "substantially" provides needed flexibility to the permitting authorities. It is important to note that this is only one aspect that the permitting authority must consider when deciding on the appropriateness of a waiver.

#### 4. Issue Permits

NPDES permitting authorities have a number of responsibilities regarding the permit process. Sections 123.35(d) through (g) ensure a certain level of consistency for permits, yet provide numerous opportunities for flexibility. NPDES permitting authorities must issue NPDES permits to cover municipal sources to be regulated under § 122.32, unless waived under § 122.32(c). EPA encourages permitting authorities to use general permits as the vehicle for permitting and regulating small MS4s. The Agency notes, however, that some operators may wish to take advantage of the option to join as a co-permittee with an MS4 regulated under the existing NPDES storm water program.

Today's final rule includes a provision, § 123.35(f), that requires NPDES permitting authorities to either include the requirements in § 122.34 for NPDES permits issued for regulated small MS4s or to develop permit limits based on a permit application submitted by a small MS4. See Section II.H.3.a, Minimum Control Measures, for more details on the actual § 122.34 requirements. See Section II.H.3.c for alternative and joint permitting options.

In an attempt to avoid duplication of effort, § 122.34(c) allows NPDES permitting authorities to include permit conditions that direct an MS4 to meet the requirements of a qualifying local, Tribal, or State municipal storm water management program. For a local, Tribal, or State program to "qualify," it must impose, at a minimum, the relevant requirements of § 122.34(b). A regulated small MS4 must still follow the procedural requirements for an NPDES permit (*i.e.*, submit an application, either an individual application or an NOI under a general permit) but will instead follow the substantive pollutant control

requirements of the qualifying local, Tribal, or State program.

Under § 122.35(b), NPDES permitting authorities may also recognize existing responsibilities among governmental entities for the minimum control measures in an NPDES small MS4 storm water permit. For example, the permit might acknowledge the existence of a State administered program that addresses construction site runoff and require that the municipalities only develop substantive controls for the remaining minimum control measures. By acknowledging existing programs, this provision is meant to reduce the duplication of efforts and to increase the flexibility of the NPDES storm water program.

Section 123.35(e) of today's final rule requires permitting authorities to specify a time period of up to 5 years from the issuance date of an NPDES permit for regulated small MS4 operators to fully develop and implement their storm water programs. As discussed more fully below, permitting authorities should be providing extensive support to the local governments to assist them in developing and implementing their programs.

In the proposed rule, EPA stated that the permitting authority would develop the menu of BMPs and if they failed to do so, EPA would develop the menu. Commenters felt that EPA should develop a menu of BMPs, rather than just providing guidance. In the settlement agreement for seeking an extension to the deadline for issuing today's rule, EPA committed to developing a menu of BMPs by October 27, 2000. Permitting authorities can adopt EPA's menu or develop their own. The menu itself is not intended to replace more comprehensive BMP guidance materials. As part of the tool box efforts, EPA will provide separate guidance documents that discuss the results from EPA-sponsored nationwide studies on the design, operation and maintenance of BMPs. Additionally, EPA expects that the new rulemaking on construction BMPs may provide more specific design, operation and maintenance criteria.

#### 5. Support and Oversee the Local Programs

NPDES permitting authorities are responsible for supporting and overseeing the local municipal programs. Section 123.35(h) of today's final rule highlights issues associated with these responsibilities.

To the extent possible, NPDES permitting authorities should provide financial assistance to MS4s, which

often have limited resources, for the development and implementation of local programs. EPA recognizes that funding for programs at the State and Tribal levels may also be limited, but strongly encourages States and Tribes to provide whatever assistance is possible. In lieu of actual dollars, NPDES permitting authorities can provide cost-cutting assistance in a number of ways. For example, NPDES permitting authorities can develop outreach materials for MS4s to distribute or the NPDES permitting authority can actually distribute the materials. Another option is to implement an erosion and sediment control program across an entire State (or Tribal land), thus alleviating the need for the MS4 to implement its own program. The NPDES permitting authority must balance the need for site-specific controls, which are best handled by a local MS4, with its ability to offer financial assistance. EPA, States, Tribes, and MS4s should work as a team in making these kinds of decisions.

NPDES permitting authorities are responsible for overseeing the local programs. Permitting authorities should work with the regulated community and other stakeholders to assist in local program development and implementation. This might include sharing information, analyzing reports, and taking enforcement actions, as necessary. NPDES permitting authorities play a vital role in supporting local programs by providing technical and programmatic assistance, conducting research projects, and monitoring watersheds. The NPDES permitting authority can also assist the MS4 permittee in obtaining adequate legal authority at the local level in order to implement the local component of the CWA section 402(p)(6) program.

NPDES permitting authorities are encouraged to coordinate and utilize the data collected under several programs. States and Tribes address point and nonpoint source storm water discharges through a variety of programs. In developing programs to carry out CWA section 402(p)(6), EPA recommends that States and Tribes coordinate all of their water pollution evaluation and control programs, including the continuing planning process under CWA section 303(e), the existing NPDES program, the CZARA program, and nonpoint source pollution control programs.

In addition, NPDES permitting authorities are encouraged to provide a brief (*e.g.*, two-page) reporting format to facilitate compilation and analysis of data from reports submitted under § 122.34(g)(3). EPA intends to develop a model form for this purpose.

## H. Municipal Role

### 1. Scope of Today's Rule

Today's final rule attempts to establish an equitable and comprehensive four-pronged approach for the designation of municipal sources. First, the approach defines for automatic coverage the municipal systems believed to be of highest threat to water quality. Second, the approach designates municipal systems that meet a set of objective criteria used to measure the potential for water quality impacts. Third, the approach designates on a case-by-case basis municipal systems that "contribute substantially to the pollutant loadings of a physically-interconnected [regulated] MS4." Finally, the approach designates on a case-by-case basis, upon petition, municipal systems that "contribute to a violation of a water quality standard or are a significant contributor of pollutants."

Today's final rule automatically designates for regulation small MS4s located in urbanized areas, and requires that NPDES permitting authorities examine for potential designation, at a minimum, a particular subset of small MS4s located outside of urbanized areas. Today's rule also includes provisions that allow for waivers from the otherwise applicable requirements for the smallest MS4s that are not causing impairment of a receiving water body. Qualifications for the waivers vary depending on whether the MS4 serves a population under 1,000 or a population under 10,000. See §§ 122.32(d) and (e). These waivers are discussed further in section II.G.3. Any small MS4 automatically designated by the final rule or designated by the permitting authority under today's final rule is defined as a "regulated" small MS4 unless it receives a waiver.

In today's final rule, all regulated small MS4s must establish a storm water discharge control program that meets the requirements of six minimum control measures. These minimum control measures are public education and outreach on storm water impacts, public involvement participation, illicit discharge detection and elimination, construction site storm water runoff control, post-construction storm water management in new development and redevelopment, and pollution prevention/good housekeeping for municipal operations.

Today's rule allows for a great deal of flexibility in how an operator of a regulated small MS4 is authorized to discharge under an NPDES permit, by providing various options for obtaining permit coverage and satisfying the

required minimum control measures. For example, the NPDES permitting authority can incorporate by reference qualifying State, Tribal, or local programs in an NPDES general permit and can recognize existing responsibilities among different governmental entities for the implementation of minimum control measures. In addition, a regulated small MS4 can participate in the storm water management program of an adjoining regulated MS4 and can arrange to have another governmental entity implement a minimum control measure on their behalf.

### 2. Municipal Definitions

#### a. Municipal Separate Storm Sewer Systems (MS4s)

The CWA does not define the term "municipal separate storm sewer." EPA defined municipal separate storm sewer in the existing storm water permit application regulations to mean, in part, a conveyance or system of conveyances (including roads with drainage systems and municipal streets) that is "owned or operated by a State, city, town borough, county, parish, district, association, or other public body \* \* \* designed or used for collecting or conveying storm water which is not a combined sewer and which is not part of a Publicly Owned Treatment Works as defined at 40 CFR 122.2" (see § 122.26(b)(8)(i)). Section 122.26 contains definitions of medium and large municipal separate storm sewer systems but no definition of a municipal separate storm sewer system, even though the term MS4 is commonly used. In today's rule, EPA is adding a definition of municipal separate storm sewer system and small municipal separate storm sewer system along with the abbreviations MS4 and small MS4.

The existing municipal permit application regulations define "medium" and "large" MS4s as those located in an incorporated place or county with a population of at least 100,000 (medium) or 250,000 (large) as determined by the latest Decennial Census (see §§ 122.26(b)(4) and 122.26(b)(7)). In today's final rule, these regulations have been revised to define all medium and large MS4s as those meeting the above population thresholds according to the 1990 Decennial Census.

Today's rule also corrects the titles and contents of Appendices F, G, H, & I to Part 122. EPA is adding those incorporated places and counties whose 1990 population caused them to be defined as a "medium" or "large" MS4. All of these MS4s have applied for

permit coverage so the effect of this change to the appendices is simply to make them more accurate. They will not need to be revised again because today's rule "freezes" the definition of "medium" and "large" MS4s at those that qualify based on the 1990 census.

EPA received several comments supporting and opposing the proposal to "freeze" the definitions based on the 1990 census. Commenters who disagreed with EPA's position cited the unfairness of municipalities that reach the medium or large threshold at a later date having fewer permitting requirements compared to those that were already at the population thresholds when the existing storm water regulations took effect. EPA recognizes this disparity but does not believe it is unfair, as explained in the proposed rule. The decision was based on the fact that the deadlines from the existing regulations have lapsed, and because the permitting authority can always require more from operators of MS4s serving "newly over 100,000" populations.

#### b. Small Municipal Separate Storm Sewer Systems

The proposal to today's final rule added "the United States" as a potential owner or operator of a municipal separate storm sewer. This addition was intended to address an omission from existing regulations and to clarify that federal facilities are, in fact, covered by the NPDES program for municipal storm water discharges when the federal facility is like other regulated MS4s. EPA received a comment that this change would cause federal facilities located in Phase 1 areas to be considered Phase 1 dischargers due to the definition of medium and large MS4s. All MS4s located in Phase 1 cities or counties are defined as Phase 1 medium or large MS4s. EPA believes that all federal facilities serve a population of under 100,000 and should be regulated as small MS4s. Therefore, in § 122.26(a)(16) of today's final rule, EPA is adding federal facilities to the NPDES storm water discharge control program by changing the proposed definition of small municipal separate storm sewer system. Paragraph (i) of this section restates the definition of municipal separate storm sewer with the addition of "the United States" as a owner or operator of a small municipal separate storm sewer. Paragraph (ii) repeats the proposed language that states that a small MS4 is a municipal separate storm sewer that is not medium or large.

Most commenters agreed that federal facilities should be covered in the same

way as other similar MS4s. However, EPA received several comments asking whether individual federal buildings such as post offices or urban offices of the U.S. Park Service must apply for coverage as regulated small MS4s. Most of these buildings have, at most, a parking lot with runoff or a storm sewer that connects with a municipality's MS4. In § 122.26(a)(16)(iii), EPA clarifies that the definition of small MS4 does not include individual buildings. These buildings may have a municipal separate storm sewer but they do not have a "system" of conveyances. The minimum measures for small MS4s were written to apply to storm sewer "systems" providing storm water drainage service to human populations and not to individual buildings. This is true of municipal separate storm sewers from State buildings as well as from federal buildings.

There will likely be situations where the permitting authority must decide if a federal or State complex should be regulated as a small MS4. A federal complex of two or three buildings could be treated as a single building and not be required to apply for coverage. In these situations, permitting authorities will have to use their best judgment as to the nature of the complex and its storm water conveyance system. Permitting authorities should also consider whether the federal or State complex cooperates with its municipality's efforts to implement their storm water management program.

Along with the questions about individual buildings, EPA received many questions about how various provisions of the rule should be interpreted for federal and State facilities. EPA acknowledges that federal and State facilities are different from municipalities. EPA believes, however, that the minimum measures are flexible enough that they can be implemented by these facilities. As an example, DOD commenters asked about how to interpret the term "public" for military installations when implementing the public education measure. EPA agrees with the suggested interpretation of "public" for DOD facilities as "the resident and employee population within the fence line of the facility."

EPA also received many comments from State departments of transportation (DOTs) that suggested the ways in which they are different from municipalities and should therefore be regulated differently. Storm water discharges from State DOTs in Phase 1 areas should already be regulated under Phase I. The preamble to Phase 1 clearly states that "all systems within a

geographical area including highways and flood control districts will be covered." Many permitting authorities regulated State DOTs as co-permittees with the Phase 1 municipality in which the highway is located. State DOTs that are already regulated under Phase I are not required to comply with Phase II. State DOTs that are not already regulated have various options for meeting the requirements of today's rule. These options are discussed in Section II.H.3.c.iv below. Several DOTs commented that some of the minimum measures are outside the scope of their mission or that they do not have the legal authority required for implementation. EPA believes that the flexibility of the minimum measures allows them to be implemented by most MS4s, including DOTs. When a DOT does not have the necessary legal authority, EPA encourages the DOT to coordinate their storm water management efforts with the surrounding municipalities and other State agencies. Under today's rule, DOTs can use any of the options of § 122.35 to share their storm water management responsibilities. DOTs may also want to work with their permitting authority to develop a State-wide DOT storm water permit.

There are many storm water discharges from State DOTs and other State MS4s located in Phase 1 areas that were not regulated under Phase 1. Today's rule adds many more State facilities as well as all federal facilities located in urbanized areas. All of these State and federal facilities that fit the definition of a small MS4 must be covered by a storm water management program. The individual permitting authorities must decide what type of permit is most applicable.

The existing NPDES storm water program already regulates storm water from federally or State-operated industrial sources. Federal or State facilities that are currently regulated due to their industrial discharges may already be implementing some of today's rule requirements.

EPA received comments that questioned the apparent inconsistency between regulating a federal facility such as a hospital and not regulating a similar private facility. Normally, this type of private facility is regulated by the MS4. EPA believes that federal facilities are subject to local water quality regulations, including storm water requirements, by virtue of the waiver of sovereign immunity in CWA section 313. However, there are special problems faced by MS4s in their efforts to regulate federal facilities that have not been encountered in regulating

similar private facilities. To ensure comprehensive coverage, today's rule merely clarifies the need for permit coverage for these federal facilities.

*i. Combined Sewer Systems (CSS).* The definition of small MS4s does not include combined sewer systems. A combined sewer system is a wastewater collection system that conveys sanitary wastewater and storm water through a single set of pipes to a publicly-owned treatment works (POTW) for treatment before discharging to a receiving waterbody. During wet weather events when the capacity of the combined sewer system is exceeded, the system is designed to discharge prior to the POTW treatment plant directly into a receiving waterbody. Such an overflow is a combined sewer overflow or CSO. Combined sewer systems are not subject to existing regulations for municipal storm water discharges, nor will they be subject to today's regulations. EPA addresses combined sewer systems and CSOs in the National Combined Sewer Overflow (CSO) Control Policy issued on April 19, 1994 (59 FR 18688). The CSO Control Policy contains provisions for developing appropriate, site-specific NPDES permit requirements for combined sewer systems. CSO discharges are subject to limitations based on the best available technology economically achievable for toxic pollutants and based on the best conventional pollutant control technology for conventional pollutants. MS4s are subject to a different technology standard for all pollutants, specifically to reduce pollutants to the maximum extent practicable.

Some municipalities are served by both separate storm sewer systems and combined sewer systems. If such a municipality is located within an urbanized area, only the separate storm sewer systems within that municipality is included in the NPDES storm water program and subject to today's final rule. If the municipality is not located in an urbanized area, then the NPDES permitting authority has discretion as to whether the discharges from the separate storm sewer system is subject to today's final rule. The NPDES permitting authority will use the same process to designate discharges from portions of an MS4 for permit coverage where the municipality is also served by a combined sewer system.

EPA recognizes that municipalities that have both combined and separate storm sewer systems may wish to find ways to develop a unified program to meet all wet weather water pollution control requirements more efficiently. In the proposal to today's final rule, EPA sought comment on ways to achieve

such a unified program. Many municipalities that are served by CSSs and MS4s commented that it is inequitable to force them to comply with Phase II at this time because implementation of the CSO Control Policy through their NPDES permits already imposes a significant financial burden. They requested an extension of the implementation time frame. They did not provide ideas on how to unify the two programs. EPA encourages permitting authorities to work with these municipalities as they develop and begin implementation of their CSO and storm water management programs. If both sets of requirements are carefully coordinated early, a cost-effective wet weather program can be developed that will address both CSO and storm water requirements.

*ii. Owners/Operators.* Several commenters mentioned the difference between the existing storm water application requirement for municipal operators and the proposed municipal requirement for owners or operators to apply. They felt that this inconsistency is confusing. The preamble to the existing regulations makes numerous references to owner/operator so there was no intent to make a clear distinction between Phase I and Phase II. Section 122.21(b) states that when the owner and operator are different, the operator must obtain the permit. MS4s often have several operators. The owner may be responsible for one part of the system and a regional authority may be responsible for other aspects. EPA proposed the "owner or operator" language to convey this dual responsibility. However, when the owner is responsible for some part of a storm water management plan, it is also an operator.

EPA has revised the regulation language to clarify that "an operator" must apply for a permit. When responsibilities for the MS4 are shared, all operators must apply.

#### c. Regulated Small MS4s

In today's final rule, all small MS4s located in an urbanized area are automatically designated as "regulated" small MS4s provided that they were not previously designated into the existing storm water program. Unlike medium and large MS4s under the existing storm water regulations, not all small MS4s are designated under today's final rule. Therefore, today's rule distinguishes between "small" MS4s and "regulated small" MS4s.

EPA's definition of "regulated small MS4s" in the proposal to today's rule included mention of incorporated places and counties. Along with the

definition, EPA included Appendices 6 and 7 to assist in the identification of areas that would probably require coverage as "automatically designated" (Appendix 6) or "potentially designated" (Appendix 7). The definition and the appendices raised many questions about exactly who was required to comply with the proposed requirements. Commenters raised issues about the definition of "incorporated place" and the status of towns, townships, and other places that are not considered incorporated by the Census Bureau. They also asked about special districts, regional authorities, MS4s already regulated, and other questions in order to clarify the rule's coverage.

EPA has revised § 122.32(a) to clarify that discharges are regulated under today's rule if they are from a small MS4 that is in an urbanized area and has not received a waiver or they are designated by the permitting authority. Today's rule does not regulate the county, city, or town. Today's rule regulates the MS4. Therefore, even though a county may be listed in Appendix 6, if that county does not own or operate the municipal storm sewer systems, the county does not have to submit an application or develop a storm water management program. If another entity does own or operate an MS4 within the county, for example, a regional utility district, that other entity needs to submit the application and develop the program.

Some commenters suggested that EPA should change the rule language to specifically allow regional authorities to be the permitted entity and to allow small MS4s to apply as co-permittees. EPA believes that the best way to clarify that regional authorities can be the primary permitted entity is the change to § 122.32(a) and the explanation above. Because EPA assumes that today's regulation will be implemented through general permits, MS4s will not be co-permittees under a general permit in the same manner as under individual permits. EPA has added § 122.33(a)(4) and made a minor change to § 122.35(a) to clarify that small MS4s can work together to share the responsibilities of a storm water management program. This is discussed further in Section II.H.3.c.iv below.

The proposed rule stated that when a county or Federal Indian reservation is only partially included in an urbanized area, only MS4s in the urbanized portion of the county or Federal Indian reservation would be regulated. In the rare cases when an incorporated place is only partially included in the urbanized area, the entire incorporated place would be regulated. EPA received comments asking about towns and



townships, because they were not considered to be incorporated areas according to the Census Bureau's definition. Would the whole town/township be covered or only the part of the town/township in the urbanized area? States use many different types of systems in their geographical divisions. Some towns are similar to incorporated cities and others are large areas that are more similar to counties. Some commenters thought that the urbanized area boundary was arbitrary, and if part of a town or county was covered, it all should be covered. Other commenters noted that some townships and counties encompass very large areas of which only a small portion is urbanized. Due to the great variety of situations, EPA has decided that for all geographical entities, only MS4s in the urbanized area are automatically designated. The population densities associated with the Census Bureau's designation of urbanized areas provide the basis for designation of these areas to protect water quality. This focused designation provides for consistency and allows for flexibility on the part of the MS4 and the permitting authority. In those situations where an incorporated place or a town is not all in an "urbanized area", there is a good possibility that it is served by more than one MS4. In those cases where the area is served by the same MS4, it makes sense to develop a storm water program for the whole area. Permitting authorities may also decide to designate all MS4s within a county or township, if they believe it is necessary to protect water quality.

Most operators of MS4s will not need to independently determine the status of coverage under today's rule. EPA has revised the proposed Appendices 6 and 7 to include towns and townships. Therefore, these appendices will alert most MS4s as to whether they are likely to be covered under today's rule. However, each permitting authority must make the decision as to who requires coverage. Most likely, an illustrative list of the regulated areas will be published with the general permit. If not, the operator can contact its permitting authority or the Bureau of the Census to find out if their separate storm sewer systems are within an urbanized area.

*i. Urbanized Area Description.* Under the Bureau of the Census definition of "urbanized area," adopted by EPA for the purposes of today's final rule, "an urbanized area (UA) comprises a place and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people." The proposal to today's rule provided the full definition and case

studies to help explain the census category of "urbanized area." Appendix 2 is a simplified urbanized area illustration to help demonstrate the concept of urbanized areas in relation to today's final rule. The "urbanized area" is the shaded area that includes within its boundaries incorporated places, a portion of a Federal Indian reservation, portions of two counties, an entire town, and portions of another town. All small MS4s located in the shaded area are covered by the rule, unless and until waived by the permitting authority. Any small MS4s located outside of the shaded area are subject to potential designation by the permitting authority.

There are 405 urbanized areas in the United States that cover 2 percent of total U.S. land area and contain approximately 63 percent of the nation's population (see Appendix 3 for a listing of urbanized areas of the United States and Puerto Rico). These numbers include U.S. Territories, although Puerto Rico is the only territory to have Census-designated urbanized areas. Urbanized areas constitute the largest and most dense areas of settlement. The purpose of determining an "urbanized area" is to delineate the boundaries of development and map the actual built-up urban area. The Bureau of the Census geographers liken it to flying over an urban area and drawing a line around the boundary of the built-up area as seen from the air.

Using data from the latest decennial census, the Census Bureau applies the urbanized area definition nationwide (including U.S. Tribes and Territories) and determines which places and counties are included within each urbanized area. For each urbanized area, the Bureau provides full listings of who is included, as well as detailed maps and special CD-ROM files for use with computerized mapping systems (such as GIS). Each State's data center receives a copy of the list, and some maps, automatically. The States also have the CD-ROM files and a variety of publications available to them for reference from the Bureau of the Census. In addition, local or regional planning agencies may have urbanized area files already. New listings for urbanized areas based on the 2000 Census will be available by July/August 2001, but the more comprehensive computer files will not be available until late 2001/early 2002.

Additional designations based on subsequent census years will be governed by the Bureau of the Census' definition of an urbanized area in effect for that year. Based on historical trends, EPA expects that any area determined by the Bureau of the Census to be

included within an urbanized area as of the 1990 Census will not later be excluded from the urbanized area as of the 2000 Census. However, it is important to note that even if this situation were to occur, for example, due to a possible change in the Bureau of the Census' urbanized area definition, a small MS4 that is automatically designated into the NPDES program for storm water under an urbanized area calculation for any given Census year will remain regulated regardless of the results of subsequent urbanized area calculations.

*ii. Rationale for Using Urbanized Areas.* EPA is using urbanized areas to automatically designate regulated small MS4s on a nationwide basis for several reasons: (1) studies and data show a high correlation between degree of development/urbanization and adverse impacts on receiving waters due to storm water (U.S. EPA, 1983; Driver et al., 1985; Pitt, R.E. 1991. "Biological Effects of Urban Runoff Discharges." Presented at the Engineering Foundation Conference: *Urban Runoff and Receiving Systems; An Interdisciplinary Analysis of Impact, Monitoring and Management*, August 1991. Mt. Crested Butte, CO. American Society of Civil Engineers, New York. 1992.; Pitt, R.E. 1995. "Biological Effects of Urban Runoff Discharges," in *Storm water Runoff and Receiving Systems: Impact, Monitoring, and Assessment*. Lewis Publishers, New York.; Galli, J. 1990. *Thermal Impacts Associated with Urbanization and Storm water Management Best Management Practices*. Prepared for the Sediment and Storm water Administration of the Maryland Department of the Environment.; Klein, 1979), (2) the blanket coverage within the urbanized area encourages the watershed approach and addresses the problem of "donut-holes," where unregulated areas are surrounded by areas currently regulated (storm water discharges from donut hole areas present a problem due to their contributing uncontrolled adverse impacts on local waters, as well as by frustrating the attainment of water quality goals of neighboring regulated communities), (3) this approach targets present and future growth areas as a preventative measure to help ensure water quality protection, and (4) the determination of urbanized areas by the Bureau of the Census allows operators of small MS4s to quickly determine whether they are included in the NPDES storm water program as a regulated small MS4.

Urbanized areas have experienced significant growth over the past 50 years. According to EPA calculations

based on Census data from 1980 to 1990, the national average rate of growth in the United States during that 10-year period was more than 4 percent. For the same period, the average growth within urbanized areas was 15.7 percent and the average for outside of urbanized areas was just more than 1 percent. The new development occurring in these growing areas can provide some of the best opportunities for implementing cost-effective storm water management controls.

EPA received many comments on the proposal to designate discharges based on location within urbanized areas. EPA considered numerous other approaches, several of which are discussed in the proposal to today's final rule. Several commenters wanted designation to be based on proven water quality problems rather than inclusion in an urbanized area. One commenter proposed an approach based on the CWA 303(d) listing of impaired waters and the wasteload allocation conducted under the TMDL process. (See section II.L. on the section 303(d) and TMDL process). The commenter's proposal would designate small MS4s on a case-by-case basis, covering only those discharges where receiving streams are shown to have water quality problems, particularly a failure to meet water quality standards, including designated uses. The commenter further described a non-NPDES approach where a State would require cost-effective measures based on a proportionate share under a waste load allocation, equitably allocated among all pollutant contributors. These waste load allocations would be developed with input from all stakeholders, and remedial measures would be implemented in a phased manner based on the probability of results and/or economic feasibility. The States would then periodically reassess the receiving streams to determine whether the remedial measures are working, and if not, require additional control measures using the same procedure used to establish the initial measures. What the commenter describes is almost a TMDL.

EPA considered a remedial approach based on water quality impairment and rejected it for failure to prevent almost certain degradation caused by urban storm water. EPA's main concern in opting not to take a case-by-case approach to designation was that this approach would not provide controls for storm water discharges in receiving streams until after a site-specific demonstration of adverse water quality impact. The commenter's suggestion would do nothing to prevent pollution in waters that may be meeting water

quality standards, including supporting designated uses. The approach would also rely on identifying storm water management programs following comprehensive watershed plans and TMDL development. In most States, water quality assessments have traditionally been conducted for principal mainstream rivers and their major tributaries, not all surface waters. The establishment of TMDLs nationwide will take many years, and many States will conduct additional monitoring to determine water quality conditions prior to establishing TMDLs. In addition, a case-by-case approach would not address the problem of "donut holes" within urbanized areas and a lack of consistency among similarly situated municipal systems would remain commonplace. After careful consideration of all comments, EPA still believes that the approach in today's rule is the most appropriate to protect water quality. Protection includes prevention as well as remediation.

#### d. Municipal Designation by the Permitting Authority

Today's final rule also allows NPDES permitting authorities to designate MS4s that should be included in the storm water program as regulated small MS4s but are not located within urbanized areas. The final rule requires, at a minimum, that a set of designation criteria be applied to all small MS4s within a jurisdiction that serves a population of at least 10,000 and has a population density of at least 1,000. Appendix 7 to this preamble provides an illustrative list of places that the Agency anticipates meet this criteria. In addition, any small MS4 may be the subject of a petition to the NPDES permitting authority for designation. See Section II.G, NPDES Permitting Authority's Role for more details on the designation and petition processes. EPA believes that the approach of combining nationwide and local designation to determine municipal coverage balances the potential for significant adverse impacts on water quality with local watershed protection and planning efforts.

#### e. Waiving the Requirements for Small MS4s

Today's final rule includes some flexibility in the nationwide coverage of all small MS4s located in urbanized areas by providing the NPDES permitting authority with the discretion to waive the otherwise applicable requirements of the smallest MS4s that are not causing the impairment of a receiving water body. Qualifications for

the waiver vary depending on whether the MS4 serves a population under 1,000 or a population between 1,000 and 10,000. Note that even if a small MS4 has requirements waived, it can subsequently be brought back into the program if circumstances change. See Section II.G, NPDES Permitting Authority's Role, for more details on this process.

### 3. Municipal Permit Requirements

#### a. Overview

*i. Summary of Permitting Options.* Today's rule outlines six minimum control measures that constitute the framework for a storm water discharge control program for regulated small MS4s that, when properly implemented, will reduce pollutants to the maximum extent practicable (MEP). These six minimum control measures are specified in § 122.34(b) and are discussed below in section "II.H.3.b, Program Requirements-Minimum Control Measures." All operators of regulated small MS4s are required to obtain coverage under an NPDES permit, unless the requirement is waived by the permitting authority in accordance with today's rule. Implementation of § 122.34(b) may be required either through an individual permit or, if the State or EPA makes one available to the facility, through a general permit. The process for issuing and obtaining these permits is discussed below in section "II.H.3.c, Application Requirements."

As an alternative to implementing a program that complies with the requirements of § 122.34, today's rule provides operators of regulated small MS4s with the option of applying for an individual permit under § 122.26(d). The permit application requirements in § 122.26 were originally drafted to apply to medium and large MS4s. Although EPA believes that the requirements of § 122.34 provide a regulatory option that is appropriate for most small MS4s, the operators of some small MS4s may prefer more individualized requirements. This alternative permitting option for regulated small MS4s that wish to develop their own program is discussed below in section "II.H.3.c.iii. Alternative Permit Option." The second alternative permitting option for regulated small MS4s is to become co-permittees with a medium or large MS4 regulated under § 122.26(d), as discussed below in section "II.H.3.c.v. Joint Permit Programs."

*ii. Water Quality-Based Requirements.* Any NPDES permit issued under today's rule must, at a minimum, require the operator to develop, implement, and

enforce a storm water management program designed to reduce the discharge of pollutants from a regulated system to the MEP, to protect water quality, and satisfy the appropriate water quality requirements of the Clean Water Act (see MEP discussion in the following section). Absent evidence to the contrary, EPA presumes that a small MS4 program that implements the six minimum measures in today's rule does not require more stringent limitations to meet water quality standards. Proper implementation of the measures will significantly improve water quality. As discussed further below, however, small MS4 permittees should modify their programs if and when available information indicates that water quality considerations warrant greater attention or prescriptiveness in specific components of the municipal program. If the program is inadequate to protect water quality, including water quality standards, then the permit will need to be modified to include any more stringent limitations necessary to protect water quality.

Regardless of the basis for the development of the effluent limitations (whether designed to implement the six minimum measures or more stringent or prescriptive limitations to protect water quality), EPA considers narrative effluent limitations requiring implementation of BMPs to be the most appropriate form of effluent limitations for MS4s. CWA section 402(p)(3)(b)(iii) expresses a preference for narrative rather than numeric effluent limits, for example, by reference to "management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." 33 U.S.C. 1342(p)(3)(B)(iii). EPA determines that pollutants from wet weather discharges are most appropriately controlled through management measures rather than end-of-pipe numeric effluent limitations. As explained in the Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits, issued on August 1, 1996 [61 FR 43761 (November 26, 1996)], EPA believes that the currently available methodology for derivation of numeric water quality-based effluent limitations is significantly complicated when applied to wet weather discharges from MS4s (compared to continuous or periodic batch discharges from most other types of discharge). Wet weather discharges from MS4s introduce a high degree of variability in the inputs to the models currently available for

derivation of water quality based effluent limitations, including assumptions about instream and discharge flow rates, as well as effluent characterization. In addition, EPA anticipates that determining compliance with any such numeric limitations may be confounded by practical limitations in sample collection.

In the first two to three rounds of permit issuance, EPA envisions that a BMP-based storm water management program that implements the six minimum measures will be the extent of the NPDES permit requirements for the large majority of regulated small MS4s. Because the six measures represent a significant level of control if properly implemented, EPA anticipates that a permit for a regulated small MS4 operator implementing BMPs to satisfy the six minimum control measures will be sufficiently stringent to protect water quality, including water quality standards, so that additional, more stringent and/or more prescriptive water quality based effluent limitations will be unnecessary.

If a small MS4 operator implements the six minimum control measures in § 122.34(b) and the discharges are determined to cause or contribute to non-attainment of an applicable water quality standard, the operator needs to expand or better tailor its BMPs within the scope of the six minimum control measures. EPA envisions that this process will occur during the first two to three permit terms. After that period, EPA will revisit today's regulations for the municipal separate storm sewer program.

If the permitting authority (rather than the regulated small MS4 operator) needs to impose additional or more specific measures to protect water quality, then that action will most likely be the result of an assessment based on a TMDL or equivalent analysis that determines sources and allocations of pollutant(s) of concern. EPA believes that the small MS4's additional requirements, if any, should be guided by its equitable share based on a variety of considerations, such as cost effectiveness, proportionate contribution of pollutants, and ability to reasonably achieve wasteload reductions. Narrative effluent limitations in the form of BMPs may still be the best means of achieving those reductions.

See Section II.L, Water Quality Issues, for further discussion of this approach to permitting, consistent with EPA's interim permitting guidance. Pursuant to CWA section 510, States implementing their own NPDES programs may develop more stringent or

more prescriptive requirements than those in today's rule.

EPA's interpretation of CWA section 402(p)(3)(B)(iii) was recently reviewed by the Ninth Circuit in *Defenders of Wildlife, et al v. Browner*, No. 98-71080 (September 15, 1999). The Court upheld the Agency's action in issuing five MS4 permits that included water quality-based effluent limitations. The Court did, however, disagree with EPA's interpretation of the relationship between CWA sections 301 and 402(p). The Court reasoned that MS4s are not compelled by section 301(b)(1)(C) to meet all State water quality standards, but rather that the Administrator or the State may rely on section 402(p)(3)(B)(iii) to require such controls. Accordingly, the *Defenders of Wildlife* decision is consistent with the Agency's 1996 "Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits."

As noted, the 1996 Policy describes how permits would implement an iterative process using BMPs, assessment, and refocused BMPs, leading toward attainment of water quality standards. The ultimate goal of the iteration would be for water bodies to support their designated uses. EPA believes this iterative approach is consistent with and implements section 301(b)(1)(C), notwithstanding the Ninth Circuit's interpretation. As an alternative to basing these water quality-based requirements on section 301(b)(1)(C), however, EPA also believes the iterative approach toward attainment of water quality standards represents a reasonable interpretation of CWA section 402(p)(3)(B)(iii). For this reason, today's rule specifies that the "compliance target" for the design and implementation of municipal storm water control programs is "to reduce pollutants to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA." The first component, reductions to the MEP, would be realized through implementation of the six minimum measures. The second component, to protect water quality, reflects the overall design objective for municipal programs based on CWA section 402(p)(6). The third component, to implement other applicable water quality requirements of the CWA, recognizes the Agency's specific determination under CWA section 402(p)(3)(B)(iii) of the need to achieve reasonable further progress toward attainment of water quality standards according to the iterative BMP process, as well as the determination that State or EPA officials who establish TMDLs could allocate waste loads to

MS4s, as they would to other point sources.

EPA does not presume that water quality will be protected if a small MS4 elects not to implement all of the six minimum measures and instead applies for alternative permit limits under § 122.26(d). Operators of such small MS4s that apply for alternative permit limits under § 122.26(d) must supply additional information through individual permit applications so that the permit writer can determine whether the proposed program reduces pollutants to the MEP and whether any other provisions are appropriate to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act.

iii. *Maximum Extent Practicable.* Maximum extent practicable (MEP) is the statutory standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve. The CWA requires that NPDES permits for discharges from MS4s "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods." CWA Section 402(p)(3)(B)(iii). This section also calls for "such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants." EPA interprets this standard to apply to all MS4s, including both existing regulated (large and medium) MS4s, as well as the small MS4s regulated under today's rule.

For regulated small MS4s under today's rule, authorization to discharge may be under either a general permit or individual permit, but EPA anticipates and expects that general permits will be the most common permit mechanism. The general permit will explain the steps necessary to obtain permit authorization. Compliance with the conditions of the general permit and the series of steps associated with identification and implementation of the minimum control measures will satisfy the MEP standard. Implementation of the MEP standard under today's rule will typically require the permittee to develop and implement appropriate BMPs to satisfy each of the required six minimum control measures.

In issuing the general permit, the NPDES permitting authority will establish requirements for each of the minimum control measures. Permits typically will require small MS4 permittees to identify in their NOI the BMPs to be performed and to develop the measurable goals by which

implementation of the BMPs can be assessed. Upon receipt of the NOI from a small MS4 operator, the NPDES permitting authority will have the opportunity to review the NOI to verify that the identified BMPs and measurable goals are consistent with the requirement to reduce pollutants under the MEP standard, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. If necessary, the NPDES permitting authority may ask the permittee to revise their mix of BMPs, for example, to better reflect the MEP pollution reduction requirement. Where the NPDES permit is not written to implement the minimum control measures specified under § 122.34(b), for example in the case of an individual permit under § 122.33(b)(2)(ii), the MEP standard will be applied based on the best professional judgment of the permit writer.

Commenters argued that MEP is, as yet, an undefined term and that EPA needs to further clarify the MEP standards by providing a regulatory definition that includes recognition of cost considerations and technical feasibility. Commenters argued that, without a definition, the regulatory community is not adequately on notice regarding the standard with which they need to comply. EPA disagrees that affected MS4 permittees will lack notice of the applicable standard. The framework for the small MS4 permits described in this notice provides EPA's interpretation of the standard and how it should be applied.

EPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in storm water pollutants on a location-by-location basis. EPA envisions that this evaluative process will consider such factors as conditions of receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan. Other factors may include MS4 size, climate, implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, geology, and capacity to perform operation and maintenance.

The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. Permit writers may evaluate small MS4 operator's

proposed storm water management controls to determine whether reduction of pollutants to the MEP can be achieved with the identified BMPs.

EPA envisions application of the MEP standard as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. If, after implementing the six minimum control measures there is still water quality impairment associated with discharges from the MS4, after successive permit terms the permittee will need to expand or better tailor its BMPs within the scope of the six minimum control measures for each subsequent permit. EPA envisions that this process may take two to three permit terms.

One commenter observed that MEP is not static and that if the six minimum control measures are not achieving the necessary water quality improvements, then an MS4 should be expected to revise and, if necessary, expand its program. This concept, it is argued, must be clearly part of the definition of MEP and thus incorporated into the binding and operative aspects of the rule. As is explained above, EPA believes that it is. The iterative process described above is intended to be sensitive to water quality concerns. EPA believes that today's rule contains provisions to implement an approach that is consistent with this comment.

#### b. Program Requirements' Minimum Control Measures

A regulated small MS4 operator must develop and implement a storm water management program designed to reduce the discharge of pollutants from their MS4 to protect water quality. The storm water management program must include the following six minimum measures.

i. *Public Education and Outreach on Storm Water Impacts.* Under today's final rule, operators of small MS4s must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps to reduce storm water pollution. The public education program should inform individuals and households about the problem and the steps they can take to reduce or prevent storm water pollution.

EPA believes that as the public gains a greater understanding of the storm water program, the MS4 is likely to gain

more support for the program (including funding initiatives). In addition, compliance with the program will probably be greater if the public understands the personal responsibilities expected of them. Well-informed citizens can act as formal or informal educators to further disseminate information and gather support for the program, thus easing the burden on the municipalities to perform all educational activities.

MS4s are encouraged to enter into partnerships with their States in fulfilling the public education requirement. It may be more cost-effective to utilize a State education program instead of numerous MS4s developing their own programs. MS4 operators are also encouraged to work with other organizations (e.g., environmental, nonprofit and industry organizations) that might be able to assist in fulfilling this requirement.

The public education program should be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities (particularly minority and disadvantaged communities). Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. Operators of MS4s may use storm water educational information provided by the State, Tribe, EPA, or environmental, public interest, trade organizations, or other MS4s. Examples of successful public education efforts concerning polluted runoff can be found in many State nonpoint source pollution control programs under CWA section 319.

The public education program should inform individuals and households about steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. Additionally, the program could inform individuals and groups on how to become involved in local stream and beach restoration activities as well as activities coordinated by youth service and conservation corps and other citizen groups. Finally, materials or outreach programs should be directed toward targeted groups of commercial,

industrial, and institutional entities likely to have significant storm water impacts. For example, MS4 operators should provide information to restaurants on the impact of grease clogging storm drains and to auto garages on the impacts of used oil discharges.

EPA received comments from representatives of State DOTs and U.S. Department of Defense (DOD) installations seeking exemption from the public education requirement. While today's rule does not exempt DOTs and military bases from the user education requirement, the Agency believes the flexibility inherent in the Rule addresses many of the concerns expressed by these commenters.

Certain DOT representatives commented that if their agencies were not exempt from the user education measure's requirements, they should at least be allowed to count DOT employee education as an adequate substitute. EPA supports the use of existing materials and programs, granted such materials and programs meet the rule's requirement that the MS4 user community (*i.e.*, the public) is also educated concerning the impacts of storm water discharges on water bodies and the steps to reduce storm water pollution.

Finally, certain DOD representatives requested that "public," as applied to their installations, be defined as the resident and employee populations within the fence line of the facility. EPA agrees that the education effort should be directed toward those individuals who frequent the federally owned land (*i.e.*, residents and individuals who come there to work and use the MS4 facilities).

EPA also received a number of comments from municipalities stating that education would be more thorough and cost effective if accomplished by EPA on the national level. EPA believes that a collaborative State and local approach, in conjunction with significant EPA technical support, will best meet the goal of targeting, and reaching, specific local audiences. EPA technical support will include a tool box which will contain fact sheets, guidance documents, an information clearinghouse, and training and outreach efforts.

Finally, EPA received comments expressing concern that the public education program simply encourages the distribution of printed material. EPA is sensitive to this concern. Upon evaluation, the Agency made changes to the proposal's language for today's rule. The language has been changed to reflect EPA's belief that a successful

program is one that includes a variety of strategies locally designed to reach specific audiences.

*ii. Public Involvement/Participation.* Public involvement is an integral part of the small MS4 storm water program. Accordingly, today's final rule requires that the municipal storm water management program must comply with applicable State and local public notice requirements. Section 122.34(b)(2) recommends a public participation process with efforts to reach out and engage all economic and ethnic groups. EPA believes there are two important reasons why the public should be allowed and encouraged to provide valuable input and assistance to the MS4's program.

First, early and frequent public involvement can shorten implementation schedules and broaden public support for a program. Opportunities for members of the public to participate in program development and implementation could include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. Moreover, members of the public may be less likely to raise legal challenges to a MS4's storm water program if they have been involved in the decision making process and program development and, therefore, internalize personal responsibility for the program themselves.

Second, public participation is likely to ensure a more successful storm water program by providing valuable expertise and a conduit to other programs and governments. This is particularly important if the MS4's storm water program is to be implemented on a watershed basis. Interested stakeholders may offer to volunteer in the implementation of all aspects of the program, thus conserving limited municipal resources.

EPA recognizes that there are a number of challenges associated with public involvement. One challenge is in engaging people in the public meeting and program design process. Another challenge is addressing conflicting viewpoints. Nevertheless, EPA strongly believes that these challenges can be addressed by use of an aggressive and inclusive program. Section II.K. provides further discussion on public involvement.

A number of municipalities sought clarification from EPA concerning what the public participation program must

actually include. In response, the actual requirements are minimal, but the Agency's recommendations are more comprehensive. The public participation program must only comply with applicable State and local public notice requirements. The remainder of the preamble, as well as the Explanatory Note accompanying the regulatory text, provide guidance to the MS4s concerning what elements a successful and inclusive program should include. EPA will provide technical support as part of the tool box (*i.e.*, providing model public involvement programs, conducting public workshops, *etc.*) to assist MS4 operators meet the intent of this measure.

Finally, the Agency encourages MS4s to seek public participation prior to submitting an NOI. For example, public participation at this stage will allow the MS4 to involve the public in developing the BMPs and measurable goals for their NOI.

*iii. Illicit Discharge Detection and Elimination.* Discharges from small MS4s often include wastes and wastewater from non-storm water "illicit" discharges. Illicit discharge is defined at 40 CFR 122.26(b)(2) as any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges pursuant to an NPDES permit and discharges resulting from fire fighting activities. As detailed below, other sources of non-storm water, that would otherwise be considered illicit discharges, do not need to be addressed unless the operator of the MS4 identifies one or more of them as a significant source of pollutants into the system. EPA's Nationwide Urban Runoff Program (NURP) indicated that many storm water outfalls still discharge during substantial dry periods. Pollutant levels in these dry weather flows were shown to be high enough to significantly degrade receiving water quality. Results from a 1987 study conducted in Sacramento, California, revealed that slightly less than one-half of the water discharged from a municipal separate storm sewer system was not directly attributable to precipitation runoff (U.S. Environmental Protection Agency, Office of Research and Development, 1993. *Investigation of Inappropriate Pollutant Entries Into Storm Drainage Systems—A User's Guide*. Washington, DC EPA 600/R-92/238.) A significant portion of these dry weather flows results from illicit and/or inappropriate discharges and connections to the municipal separate storm sewer system. Illicit discharges enter the system through either direct connections (*e.g.*, wastewater piping either mistakenly or

deliberately connected to the storm drains) or indirect connections (*e.g.*, infiltration into the storm drain system or spills collected by drain inlets).

Under the existing NPDES program for storm water, permit applications for large and medium MS4s are to include a program description for effective prohibition against non-storm water discharges into their storm sewers (see 40 CFR 122.26 (d)(1)(v)(B) and (d)(1)(iv)(B)). Further, EPA believes that in implementing municipal storm water management plans under these permits, large and medium MS4 operators generally found their illicit discharge detection and elimination programs to be cost-effective. Properly implemented programs also significantly improved water quality.

In today's rule, any NPDES permit issued to an operator of a regulated small MS4 must, at a minimum, require the operator to develop, implement and enforce an illicit discharge detection and elimination program. Inclusion of this measure for regulated small MS4s is consistent with the "effective prohibition" requirement for large and medium MS4s. Under today's rule, the NPDES permit will require the operator of a regulated small MS4 to: (1) Develop (if not already completed) a storm sewer system map showing the location of all outfalls, and names and location of all waters of the United States that receive discharges from those outfalls; (2) to the extent allowable under State, Tribal, or local law, effectively prohibit through ordinance, or other regulatory mechanism, illicit discharges into the separate storm sewer system and implement appropriate enforcement procedures and actions as needed; (3) develop and implement a plan to detect and address illicit discharges, including illegal dumping, to the system; and (4) inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

The illicit discharge and elimination program need only address the following categories of non-storm water discharges if the operator of the small MS4 identifies them as significant contributors of pollutants to its small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and

wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the definition of illicit discharge and only need to be addressed where they are identified as significant sources of pollutants to waters of the United States). If the operator of the MS4 identifies one or more of these categories of sources to be a significant contributor of pollutants to the system, it could require specific controls for that category of discharge or prohibit the discharges completely.

Several comments were received on the mapping requirements of the proposal. Most comments said that more flexibility should be given to the MS4s to determine their mapping needs, and that resources could be better spent in addressing problems once the illicit discharges are detected. EPA reviewed the mapping requirements in the proposed rule and agrees that some of the information is not necessary in order to begin an illicit discharge detection and elimination program. Today's rule requires a map or set of maps that show the locations of all outfalls and names and locations of receiving waters. Knowing the locations of outfalls and receiving waters are necessary to be able to conduct dry weather field screening for non-storm water flows and to respond to illicit discharge reports from the public. EPA recommends that the operator collect any existing information on outfall locations (*e.g.*, review city records, drainage maps, storm drain maps), and then conduct field surveys to verify the locations. It will probably be necessary to "walk" (*i.e.* wade small receiving waters or use a boat for larger receiving waters) the streambanks and shorelines, and it may take more than one trip to locate all outfalls. A coding system should be used to mark and identify each outfall. MS4 operators have the flexibility to determine the type (*e.g.* topographic, GIS, hand or computer drafted) and size of maps which best meet their needs. The map scale should be such that the outfalls can be accurately located. Once an illicit discharge is detected at an outfall, it may be necessary to map that portion of the storm sewer system leading to the outfall in order to locate the source of the discharge.

Several comments requested clarification of the requirement to develop and implement a plan to detect and eliminate illicit discharges. EPA recommends that plans include procedures for the following: locating priority areas; tracing the source of an illicit discharge; removing the source of the discharge; and program evaluation

and assessment. EPA recommends that MS4 operators identify priority areas (*i.e.*, problem areas) for more detailed screening of their system based on higher likelihood of illicit connections (*e.g.*, areas with older sanitary sewer lines), or by conducting ambient sampling to locate impacted reaches. Once priority areas are identified, EPA recommends visually screening outfalls during dry weather and conducting field tests, where flow is occurring, of selected chemical parameters as indicators of the discharge source. EPA's manual for investigation of inappropriate pollutant entries into the storm drainage system (EPA, 1993) suggests the following parameter list: specific conductivity, fluoride and/or hardness concentration, ammonia and/or potassium concentration, surfactant and/or fluorescence concentration, chlorine concentration, pH and other chemicals indicative of industrial sources. The manual explains why each parameter is a good indicator and how the information can be used to determine the type of source flow. The Agency is not recommending that fluoride and chlorine, generally used to locate potable water discharges, be addressed under this program, therefore a short list of parameters may include conductivity, ammonia, surfactant and pH. Some MS4s have found it useful to measure for fecal coliform or *E. coli* in their testing program. Observations of physical characteristics of the discharge are also helpful such as flow rate, temperature, odor, color, turbidity, floatable matter, deposits and stains, and vegetation.

The implementation plan should also include procedures for tracing the source of an illicit discharge. Once an illicit discharge is detected and field tests provide source characteristics, the next step is to determine the actual location of the source. Techniques for tracing the discharge to its place of origin may include: following the flow up the storm drainage system via observations and/or chemical testing in manholes or in open channels; televising storm sewers; using infrared and thermal photography; conducting smoke or dye tests.

The implementation plan should also include procedures for removing the source of the illicit discharge. The first step may be to notify the property owner and specify a length of time for eliminating the discharge. Additional notifications and escalating legal actions should also be described in this part of the plan.

Finally, the implementation plan should include procedures for program evaluation and assessment. Procedures

could include documentation of actions taken to locate and eliminate illicit discharges such as: number of outfalls screened, complaints received and corrected, feet of storm sewers televised, numbers of discharges and quantities of flow eliminated, number of dye or smoke tests conducted. Appropriate records of such actions should be kept and should be submitted as part of the annual reports for the first permit term, as specified by the permitting authority (reports only need to be submitted in years 2 and 4 in later permits). For more on reporting requirements, see § 122.34(g).

EPA received comments regarding an MS4's legal authority beyond its jurisdictional boundaries to inspect or take enforcement against illicit discharges. EPA recognizes that illicit flows may originate in one jurisdiction and cross into one or more jurisdictions before being discharged at an outfall. In such instances, EPA expects the MS4 that detects the illicit flow to trace it to the point where it leaves their jurisdiction and notify the adjoining MS4 of the flow, and any other physical or chemical information. The adjoining MS4 should then trace it to the source or to the location where it enters their jurisdiction. The process of notifying the adjoining MS4 should continue until the source is located and eliminated. In addition, because any non-storm water discharge to waters of the U.S. through an MS4 is subject to the prohibition against unpermitted discharges pursuant to CWA section 301 (a), remedies are available under the federal enforcement provisions of CWA sections 309 and 505.

EPA requested and received comments regarding the prohibition and enforcement provision for this minimum measure. Commenters specifically questioned the proposal that the operator only has to implement the appropriate prohibition and enforcement procedures "to the extent allowable under State or Tribal law." They raised concerns that by qualifying prohibition and enforcement procedures in this manner, the operator could altogether ignore this minimum measure where affirmative legal authority did not exist. Comments suggested that EPA require States to grant authority to those municipalities where it did not exist. Other comments, however, stated that municipalities cannot exercise legal authority not granted to them under State law, which varies considerably from one State to another. EPA has no intention of directing State legislatures on how to allocate authority and responsibility under State law. As noted above, there is at least one remedy (the

federal CWA) to control non-storm water discharges through MS4s. If State law prevents political subdivisions from controlling discharges through storm sewers, EPA anticipates common sense will prevail to provide those MS4 operators with the ability to meet the requirements applicable for their discharges.

One comment reinforced the importance of public information and education to the success of this measure. EPA agrees and suggests that MS4 operators consider a variety of ways to inform and educate the public which could include storm drain stenciling; a program to promote, publicize, and facilitate public reporting of illicit connections or discharges; and distribution of visual and/or printed outreach materials. Recycling and other public outreach programs could be developed to address potential sources of illicit discharges, including used motor oil, antifreeze, pesticides, herbicides, and fertilizers.

EPA received comments that State DOT's lack authority to implement this measure. EPA believes that most DOTs can implement most parts of this measure. If a DOT does not have the necessary legal authority to implement any part of this measure, EPA encourages them to coordinate their storm water management efforts with the surrounding MS4s and other State agencies. Many DOTs that are regulated under Phase I of this program are co-permittees with the local regulated MS4. Under today's rule, DOTs can use any of the options of § 122.35 to share their storm water management responsibilities.

EPA received comments requesting clarification of various terms such as "outfall" and "illicit discharge." One comment asked EPA to reinforce the point that a "ditch" could be considered an outfall. The term "outfall" is defined at 40 CFR 122.26(b)(9) as "a point source at the point where a municipal separate storm sewer discharges to waters of the United States \* \* \*". The term municipal separate storm sewer is defined at 40 CFR § 122.26(b)(8) as "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) \* \* \*". Following the logic of these definitions, a "ditch" may be part of the municipal separate storm sewer, and at the point where the ditch discharges to waters of the United States, it would be an outfall. As with any determination about jurisdictional provisions of the CWA, however, final decisions require case specific evaluations of fact.



One commenter specifically requested clarification on the relationship between the term "illicit discharge" and non-storm water discharges from fire fighting. The comment suggested that it would be impractical to attempt to determine whether the flow from a specific fire (i.e., during a fire) is a significant source of pollution. EPA intends that MS4s will address all allowable non-storm water flows categorically rather than individually. If an MS4 is concerned that flows from fire fighting are, as a category, contributing substantial amounts of pollutants to their system, they could develop a program to address those flows prospectively. The program may include an analysis of the flow from several sources, steps to minimize the pollutant contribution, and a plan to work with the sources of the discharge to minimize any adverse impact on water quality. During the development of such a program, the MS4 may determine that only certain types of flows within a particular category are a concern, for example, fire fighting flows at industrial sites where large quantities of chemicals are present. In this example, a review of existing procedures with the fire department and/or hazardous materials team may reveal weaknesses or strengths previously unknown to the MS4 operator.

EPA received comments requesting modifications to the rule to include on-site sewage disposal systems (i.e., septic systems) in the scope of the illicit discharge program. On-site sewage disposal systems that flow into storm drainage systems are within the definition of illicit discharge as defined by the regulations. Where they are found to be the source of an illicit discharge, they need to be eliminated similar to any other illicit discharge source. Today's rule was not modified to include discharges from on-site sewage disposal systems specifically because those sources are already within the scope of the existing definition of illicit discharge.

*iv. Construction Site Storm Water Runoff Control.* Over a short period of time, storm water runoff from construction site activity can contribute more pollutants, including sediment, to a receiving stream than had been deposited over several decades (see section I.B.3). Storm water runoff from construction sites can include pollutants other than sediment, such as phosphorus and nitrogen, pesticides, petroleum derivatives, construction chemicals, and solid wastes that may become mobilized when land surfaces are disturbed. Generally, properly

implemented and enforced construction site ordinances effectively reduce these pollutants. In many areas, however, the effectiveness of ordinances in reducing pollutants is limited due to inadequate enforcement or incomplete compliance with such local ordinances by construction site operators (Paterson, R.G. 1994. "Construction Practices: The Good, the Bad, and the Ugly." *Watershed Protection Techniques* 1(2)).

Today's rule requires operators of regulated small MS4s to develop, implement, and enforce a pollutant control program to reduce pollutants in any storm water runoff from construction activities that result in land disturbance of 1 or more acres (see § 122.34(b)(4)). Construction activity on sites disturbing less than one acre must be included in the program if the construction activity is part of a larger common plan of development or sale that would disturb one acre or more.

The construction runoff control program of the regulated small MS4 must include an ordinance or other regulatory mechanism to require erosion and sediment controls to the extent practicable and allowable under State, Tribal or local law. The program also must include sanctions to ensure compliance (for example, non-monetary penalties, fines, bonding requirements, and/or permit denials for non-compliance). The program must also include, at a minimum: requirements for construction site operators to implement appropriate erosion and sediment control BMPs, such as silt fences, temporary detention ponds and diversions; procedures for site plan review by the small MS4 which incorporate consideration of potential water quality impacts; requirements to control other waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may adversely impact water quality; procedures for receipt and consideration of information submitted by the public to the MS4; and procedures for site inspection and enforcement of control measures by the small MS4.

Today's rule provides flexibility for regulated small MS4s by allowing them to exclude from their construction pollutant control program runoff from those construction sites for which the NPDES permitting authority has waived NPDES storm water small construction permit requirements. For example, if the NPDES permitting authority waives permit coverage for storm water discharges from construction sites less than 5 acres in areas where the rainfall erosivity factor is less than 5, then the regulated small MS4 does not have to

include these sites in its storm water management program. Even if requirements for a discharge from a given construction site are waived by the NPDES permitting authority, however, the regulated small MS4 may still choose to control those discharges under the MS4's construction pollutant control program, particularly where such discharges may cause siltation problems in storm sewers. See Section II.I.1.b for more information on construction waivers by the permitting authority.

Some commenters suggested that the proposed construction minimum measure requirements went beyond the permit application requirements concerning construction for medium and large MS4s. In response, EPA has made changes to the proposed measure so that it more closely resembles the MS4 permit application requirements in existing regulations. For example, as described below, the Agency revised the proposed requirements for "pre-construction review of site management plans" to require "procedures for site plan review."

One commenter expressed concerns that addressing runoff from construction sites within urbanized areas (through the small MS4 program) differently from construction sites outside urbanized areas (which will not be covered by the small MS4 program) will encourage urban sprawl. Today's rule, together with the existing requirements, requires all construction greater than or equal to 1 acre, unless waived, to be covered by an NPDES permit whether it is located inside or outside of an urbanized area (see § 122.26(b)(15)). Today's rule does not require small MS4s to control runoff from construction sites more stringently or prescriptively than is required for construction site runoff outside urbanized areas. Therefore, today's rule imposes no substantively different onsite controls on runoff of storm water from construction sites in urbanized areas than from construction sites outside of urbanized areas.

One commenter recommended that the small MS4 construction site storm water runoff control program address all storm water runoff from construction sites, not just the runoff into the MS4. The commenter also believed that MS4s should provide clear, objective standards for all construction sites. EPA agrees. Because today's rule only regulates discharges from the MS4, the construction pollutant control measure only requires small MS4 operators to control runoff into its system. As a practical matter, however, EPA anticipates that MS4 operators will find that regulation of all construction site

runoff, whether they runoff into the MS4 or not, will prove to be the most simple and efficient program. The Agency may provide more specific criteria for construction site BMPs in the forthcoming rule being developed under CWA section 402(m). See section II.D.1 of today's rule.

One commenter stated that there is no need for penalties at the local level by the small MS4 because the CWA already imposes sufficient penalties to ensure compliance. EPA disagrees and believes that enforcement and compliance at the local level is both necessary and preferable. Examples of sanctions, some not available under the CWA, include non-monetary penalties, monetary fines, bonding requirements, and denial of future or other local permits.

One commenter recommended that EPA should not include the requirement to control pollutants other than sediment from construction sites in this measure. EPA disagrees with this comment. The requirement is to control waste that "may cause adverse impacts on water quality." Such wastes may include discarded building materials, concrete truck washout, chemicals, pesticides, herbicides, litter, and sanitary waste. These wastes, when exposed to and mobilized by storm water, can contribute to water quality impairment.

The proposed rule required "procedures for pre-construction review of site management plans." EPA requested comment on expanding this provision to require both review and approval of construction site storm water plans. Many commenters expressed the concern that review and approval of site plans is not only costly and time intensive, but may unnecessarily delay construction projects and unduly burden staff who administer the local program. In addition, some commenters expressed confusion whether EPA proposed pre-construction review for all site management plans or only higher priority sites. To address these comments, and be consistent with the permit application requirements for larger MS4s, EPA changed "procedures for pre-construction review of site management plans" to "procedures for site plan review." Today's rule requires the small MS4 to develop procedures for site plan review so as to incorporate consideration of adverse potential water quality impacts. Procedures should include review of site erosion and sediment control plans, preferably before construction activity begins on a site. The objective is for the small MS4 operator and the construction site operator to address storm water runoff

from construction activity early in the project design process so that potential consequences to the aquatic environment can be assessed and adverse water quality impacts can be minimized or eliminated.

One commenter requested that EPA delete the requirement for "procedures for receipt and consideration of information submitted by the public" because it went beyond existing storm water requirements. Another commenter stated that establishing a separate process to respond to public inquiries on a project is a burden to small communities, especially if the project has gone through an environmental review. One commenter requested clarification of this provision. EPA has retained this requirement in today's final rule to require some formality in the process for addressing public inquiries regarding storm water runoff from construction activities. EPA does not intend that small MS4s develop a separate, burdensome process to respond to every public inquiry. A small MS4 could, for example, simply log public complaints on existing storm water runoff problems from construction sites and pass that information on to local inspectors. The inspectors could then investigate complaints based on the severity of the violation and/or priority area.

One commenter believed that the proposed requirement of "regular inspections during construction" would require every construction project to be inspected more than once by the small MS4 during the term of a construction project. EPA has deleted the reference to "regular inspections." Instead, the small MS4 will be required to "develop procedures for site inspection and enforcement of control measures." Procedures could include steps to identify priority sites for inspection and enforcement based on the nature and extent of the construction activity, topography, and the characteristics of soils and receiving water quality.

In order to avoid duplication of small MS4 construction requirements with NPDES construction permit requirements, today's rule adds § 122.44(s) to recognize that the NPDES permitting authority can incorporate qualifying State, Tribal, or local erosion and sediment control requirements in NPDES permits for construction site discharges. For example, a construction site operator who complies with MS4 construction pollutant control programs that are referenced in the NPDES construction permit would satisfy the requirements of the NPDES permit. See section II.I.1.d for more information on incorporating qualifying programs by

reference into NPDES construction permits. This provision has no impact on, or direct relation to, the small MS4 operator's responsibilities under the construction site storm water runoff control minimum measure. Conversely, under § 122.35(b), the permitting authority may recognize in the MS4's permit that another governmental entity, or the permitting authority itself, is responsible for implementing one or more of the minimum measures (including construction site storm water runoff control), and not include this measure in the small MS4's permit. In this case, the other governmental entity's program must satisfy all of the requirements of the omitted measure.

*v. Post-Construction Storm Water Management in New Development and Redevelopment.* The NURP study and more recent investigations indicate that prior planning and designing for the minimization of pollutants in storm water discharges is the most cost-effective approach to storm water quality management. Reducing pollutant concentrations in storm water after the discharge enters a storm sewer system is often more expensive and less efficient than preventing or reducing pollutants at the source. Increased human activity associated with development often results in increased pollutant loading from storm water discharges. If potential adverse water quality impacts are considered from the beginning stages of a project, new development and redevelopment provides more opportunities for water quality protection. For example, minimization of impervious areas, maintenance or restoration of natural infiltration, wetland protection, use of vegetated drainage ways, and use of riparian buffers have been shown to reduce pollutant loadings in storm water runoff from developed areas. EPA encourages operators of regulated small MS4s to identify specific problem areas within their jurisdictions and initiate innovative solutions and designs to focus attention on those areas through local planning.

In today's rule at § 122.34(b)(5), NPDES permits issued to an operator of a regulated small MS4 will require the operator to develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that result in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the MS4. Specifically, the NPDES permit will require the operator of a regulated small MS4 to: (1) Develop and implement

strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the community; (2) use an ordinance, or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; (3) ensure adequate long-term operation and maintenance of BMPs; and (4) ensure that controls are in place that would minimize water quality impacts. EPA intends the term "redevelopment" to refer to alterations of a property that change the "footprint" of a site or building in such a way that results in the disturbance of equal to or greater than 1 acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse storm water quality impacts and offer no new opportunity for storm water controls.

EPA received comments requesting guidance and clarification of the rule requirements. The scope of the comments ranged from general requests for more details on how MS4 operators should accomplish the four requirements listed above, to specific requests for information regarding transfer of ownership for structural controls, as well as ongoing responsibility for operation and maintenance. By the term "combination" of BMPs, EPA intends a combination of structural and/or non-structural BMPs. For this requirement, the term "combination" is meant to emphasize that multiple BMPs should be considered and adopted for use in the community. A single BMP generally cannot significantly reduce pollutant loads because pollutants come from many sources within a community. The BMPs chosen should: (1) Be appropriate for the local community; (2) minimize water quality impacts; and (3) attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages small MS4 operators to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders. Each new development and redevelopment project should have a BMP component. If an approach is chosen that primarily focuses on regional or non-structural BMPs, however, then the BMPs may be located away from the actual development site (e.g., a regional water quality pond).

Non-structural BMPs are preventative actions that involve management and source controls such as: (1) Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas

such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (2) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing storm sewer infrastructure; (3) education programs for developers and the public about project designs that minimize water quality impacts; and (4) other measures such as minimization of the percentage of impervious area after development, use of measures to minimize directly connected impervious areas, and source control measures often thought of as good housekeeping, preventive maintenance and spill prevention. Detailed examples of non-structural BMPs follow.

Preserving open space may help to protect water quality as well as provide other benefits such as recharging groundwater supplies, detaining storm water, supporting wildlife and providing recreational opportunities. Although securing funding for open space acquisition may be difficult, various funding mechanisms have been used. New Jersey uses a portion of their State sales tax (voter approved for a ten year period) as a stable source of funding to finance the preservation of historic sites, open space and farmland. Colorado uses part of the proceeds from the State lottery to acquire and manage open space. Some local municipalities use a percentage of the local sales tax revenue to pay for open space acquisition (e.g., Jefferson County, CO has had an open space program in place since 1977 funded by a 0.50 percent sales tax). Open space can be acquired in the form of: fee simple purchase; easements; development rights; purchase and sellback or leaseback arrangements; purchase options; private land trusts; impact fees; and land dedication requirements. Generally, fee simple purchases provide the highest level of development control and certainty of preservation, whereas the other forms of acquisition may provide less control, though they would also generally be less costly.

Cluster development, while allowing housing densities comparable to conventional zoning practice, concentrates housing units in a portion of the total site area which provides for greater open space, recreation, stream protection and storm water control. This type of development, by reducing lot sizes, can protect sensitive areas and result in less impervious surface, as well

as reduce the cost for roads and other infrastructure.

Minimizing directly connected impervious areas (DCIAs) is a drainage strategy that seeks to reduce paved areas and directs storm water runoff to landscaped areas or to structural controls such as grass swales or buffer strips. This strategy can slow the rate of runoff, reduce runoff volumes, attenuate peak flows, and encourage filtering and infiltration of storm water. It can be made an integral part of drainage planning for any development (Urban Drainage and Flood Control District, Denver, CO. 1992. *Urban Storm Drainage Criteria Manual, Volume 3—Best Management Practices*). The Urban Drainage and Flood Control District manual describes three levels for minimizing DCIAs. At Level 1 all impervious surfaces are made to drain over grass-covered areas before reaching a storm water conveyance system. Level 2 adds to Level 1 and replaces street curb and gutter systems with low-velocity grass-lined swales and pervious street shoulders. In addition to Levels 1 and 2, Level 3 over-sizes swales and configures driveway and street crossing culverts to use grass-lined swales as elongated detention basins.

Structural BMPs include: (1) Storage practices such as wet ponds and extended-detention outlet structures; (2) filtration practices such as grassed swales, sand filters and filter strips; and (3) infiltration practices such as infiltration basins and infiltration trenches.

EPA recommends that small MS4 operators ensure the appropriate implementation of the structural BMPs by considering some or all of the following: (1) Pre-construction review of BMP designs; (2) inspections during construction to verify BMPs are built as designed; (3) post-construction inspection and maintenance of BMPs; and (4) sanctions to ensure compliance with design, construction or operation and maintenance (O&M) requirements of the program.

EPA cautions that certain infiltration systems such as dry wells, bored wells or tile drainage fields may be subject to Underground Injection Control (UIC) program requirements (see 40 CFR Part 144.12.). To find out more about these requirements, contact your state UIC Program, or call EPA's Safe Drinking Water Hotline at 1-800-426-4791.

In order to meet the third post-construction requirement (ensuring adequate long-term O&M of BMPs), EPA recommends that small MS4 operators evaluate various O&M management agreement options. The most common options are agreements between the

MS4 operator and another party such as post-development landowners (e.g., homeowners' associations, office park owners, other government departments or entities), or regional authorities (e.g., flood control districts, councils of government). These agreements typically require the post-construction property owner to be responsible for the O&M and may include conditions which: allow the MS4 operator to be reimbursed for O&M performed by the MS4 operator that is the responsibility of the property owner but is not performed; allow the MS4 operator to enter the property for inspection purposes; and in some cases specify that the property owner submit periodic reports.

In providing the guidance above, EPA intends the requirements in today's rule to be consistent with the permit application requirements for large MS4s for post-construction controls for new development and redevelopment. MS4 operators have significant flexibility both to develop this measure as appropriate to address local concerns, and to apply new control technologies as they become available. Storm water pollution control technologies are constantly being improved. EPA recommends that MS4s be responsive to these changes, developments or improvements in control technologies. EPA will provide more detailed guidance addressing the responsibility for long-term O&M of storm water controls in guidance materials. The guidance will also provide information on appropriate planning considerations, structural controls and non-structural controls. EPA also intends to develop a broad menu of BMPs as guidance to ensure flexibility to accommodate local conditions.

EPA received comments suggesting that requirements for new development be treated separately from redevelopment in the rule. The comment stressed that new development on raw land presents fewer obstacles and more opportunities to incorporate elements for preventing water quality impacts, whereas redevelopment projects are constrained by space limitations and existing infrastructure. Another comment suggested allowing waivers from the redevelopment requirements if the redevelopment does not result in additional adverse water quality impacts, and where BMPs are not technologically or economically feasible. EPA recognizes that redevelopment projects may have more site constraints which narrow the range of appropriate BMPs. Today's rule provides small MS4 operators with the

flexibility to develop requirements that may be different for redevelopment projects, and may also include allowances for alternate or off-site BMPs at certain redevelopment projects. Non-structural BMPs may be the most appropriate approach for smaller redevelopment projects.

EPA received comments requesting clarification on what is meant by "pre-development" conditions within the context of redevelopment. Pre-development refers to runoff conditions that exist onsite immediately before the planned development activities occur. Pre-development is not intended to be interpreted as that period before any human-induced land disturbance activity has occurred.

EPA received comments on the guidance language in the proposed rule and preamble which suggest that implementation of this measure should "attempt to maintain pre-development runoff conditions" and that "post-development conditions should not be different than pre-development conditions in a way that adversely affects water quality." Many comments expressed concern that maintaining pre-development runoff conditions is impossible and cost-prohibitive, and objected to any reference to "flow" or increase in volume of runoff. Other comments support the inclusion of this language in the final rule. Similar references in today's rule relating to pre-development runoff conditions are intended as *recommendations to attempt to maintain pre-development runoff conditions*. With these recommendations, EPA intends to prevent water quality impacts resulting from increased discharges of pollutants, which may result from increased volume of runoff. In many cases, consideration of the increased flow rate, velocity and energy of storm water discharges following development unavoidably must be taken into consideration in order to reduce the discharge of pollutants, to meet water quality standards and to prevent degradation of receiving streams. EPA recommends that municipalities consider these factors when developing their post-construction storm water management program.

Some comments said that the quoted phrases in the paragraph above are directives that imply federal land use control, which they argue is beyond the authority of the CWA. EPA recognizes that land use planning is within the authority of local governments.

EPA disagrees, however, with the implication that today's rule dictates any such land use decisions. The requirement for small MS4 operators to

develop a program to address discharges resulting from new development and redevelopment is essentially a pollution prevention measure. The Rule provides the MS4 operator with flexibility to determine the appropriate BMPs to address local water quality concerns. EPA recognizes that these program goals may not be applied to every site, and expects that MS4s will develop an appropriate combination of BMPs to be applied on a site-by-site, regional or watershed basis.

*vi. Pollution Prevention/Good Housekeeping for Municipal Operations.* Under today's final rule, operators of MS4s must develop and implement an operation and maintenance program ("program") that includes a training component and has the ultimate goal of preventing or reducing storm water from municipal operations (in addition to those that constitute storm water discharges associated with industrial activity). This measure's emphasis on proper O&M of MS4s and employee training, as opposed to requiring the MS4 to undertake major new activities, is meant to ensure that municipal activities are performed in the most efficient way to minimize contamination of storm water discharges.

The program must include government employee training that addresses prevention measures pertaining to municipal operations such as: parks, golf courses and open space maintenance; fleet maintenance; new construction or land disturbance; building oversight; planning; and storm water system maintenance. The program can use existing storm water pollution prevention training materials provided by the State, Tribe, EPA, or environmental, public interest, or trade organizations.

EPA also encourages operators of MS4s to consider the following in developing a program: (1) Implement maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from the separate storm sewers; (2) implement controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt/sand storage locations and snow disposal areas operated by the MS4; (3) adopt procedures for the proper disposal of waste removed from the separate storm sewer systems and areas listed above in (2), including dredge

spoil, accumulated sediments, floatables, and other debris; and (4) adopt procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices. Ultimately, the effective performance of the program measure depends on the proper maintenance of the BMPs, both structural and non-structural. Without proper maintenance, BMP performance declines significantly over time. Additionally, BMP neglect may produce health and safety threats, such as structural failure leading to flooding, undesirable animal and insect breeding, and odors. Maintenance of structural BMPs could include: replacing upper levels of gravel; dredging of detention ponds; and repairing of retention basin outlet structure integrity. Maintenance of non-structural BMPs could include updating educational materials periodically.

EPA emphasizes that programs should identify and incorporate existing storm water practices and training, as well as non-storm water practices or programs that have storm water pollution prevention benefits, as a means to avoid duplication of efforts and reduce overall costs. EPA recommends that MS4s incorporate these new obligations into their existing programs to the greatest extent feasible and urges States to evaluate MS4 programs with programmatic efficiency in mind. EPA designed this minimum control measure as a modified version of the permit application requirements for medium and large MS4s described at 40 CFR 122.26(d)(2)(iv), in order to provide more flexibility for these smaller MS4s. Today's requirements provide for a consistent approach to control pollutants from O&M among medium, large, and regulated small MS4s.

By properly implementing a program, operators of MS4s serve as a model for the rest of the regulated community. Furthermore, the establishment of a long-term program could result in cost savings by minimizing possible damage to the system from floatables and other debris and, consequently, reducing the need for repairs.

EPA received comments requesting clarification of what this measure requires. Certain municipalities expressed concern that the measure has the potential to impose significant costs associated with EPA's requirement that operators of MS4s consider implementing controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, and salt/sand storage

locations and snow disposal areas operated by the municipality. EPA disagrees that a requirement to *consider* such controls will impose considerable costs.

One commenter objected to the preamble language from the proposal suggesting that EPA does not expect the MS4 to undertake new activity. While it remains the Agency's expectation that major new activity will not be required, the MEP process should drive MS4s to incorporate the measure's obligations into their existing programs to achieve the pollutant reductions to the maximum extent practicable.

Certain commenters requested a definition for "municipal operations." EPA has revised the language to more clearly define municipal operations. Questions may remain concerning whether discharges from specific municipal activities constitute discharges associated with industrial activities (requiring NPDES permit authorization according to the requirements for industrial storm water that apply in that State) or from municipal operations (subject only to the controls developed in the MS4 control program). Even though there may be different substantive requirements that apply depending on the source of the discharge, EPA has modified the deadlines for permit coverage so that all the regulated municipally owned and operated sources become subject to permit requirements on the same date. The deadline is the same for permit coverage for this minimum measure as for permit coverage for municipally owned/operated industrial sources.

#### c. Application Requirements

An NPDES permit that authorizes the discharge from a regulated small MS4 may take the form of either an individual permit issued to one or more facilities as co-permittees or a general permit that applies to a group of MS4s. For reasons of administrative efficiency and to reduce the paperwork burden on permittees, EPA expects that most discharges from regulated small MS4s will be authorized under general permits. These NPDES general permits will provide specific instructions on how to obtain coverage, including application requirements. Typically, such application requirements will be satisfied by the submission of a Notice of Intent (NOI) to be covered by the general permit. In this section, EPA explains the small MS4 operator's application requirements for obtaining coverage under a NPDES permit for storm water.

*i. Best Management Practices and Measurable Goals*, Section 122.34(d) of today's rule requires the operator of a regulated small MS4 that wishes to implement a program under § 122.34 to identify and submit to the NPDES permitting authority a list of the best management practices ("BMPs") that will be implemented for each minimum control measure in their storm water management program. They also must submit measurable goals for the development and implementation of each BMP. The BMPs and the measurable goals must be included either in an NOI to be covered under a general permit or in an individual permit application.

The operator's submission must identify, as appropriate, the months and years in which the operator will undertake actions required to implement each of the minimum control measures, including interim milestones and the frequency of periodic actions. The Agency revised references to "starting and completing" actions from the proposed rule because many actions will be repetitive or ongoing. The submission also must identify the person or persons responsible for implementing or coordinating the small MS4 storm water program. See § 122.34(d). The submitted BMPs and measurable goals become enforceable according to the terms of the permit. The first permit can allow the permittee up to five years to fully implement the storm water management program.

Several commenters opposed making the measurable goals enforceable permit conditions. Some suggested that a permittee should be able to change its goals so that BMPs that are not functioning as intended can be replaced. EPA agrees that a permittee should be free to switch its BMPs and corresponding goals to others that accomplish the minimum measure or measures. The permittee is required to implement BMPs that address the minimum measures in § 122.34(b). If the permittee determines that its original combination of BMPs are not adequate to achieve the objectives of the municipal program, the MS4 should revise its program to implement BMPs that are adequate and submit to the permitting authority a revised list of BMPs and measurable goals. EPA suggests that permits describe the process for revising BMPs and measurable goals, such as whether the permittee should follow the same procedures as were required for the submission of the original NOI and whether the permitting authority's approval is necessary prior to the permittee implementing the revised

BMPs. The permittee should indicate on its periodic report whether any BMPs and measurable goals have been revised since the last periodic report.

Some commenters expressed concern that making the measurable goals enforceable would encourage the development of easily attained goals and, conversely, discourage the setting of ambitious goals. Others noted that it is often difficult to determine the pollutant reduction that can be achieved by BMPs until several years after implementation. Much of the opposition to the enforceability of measurable goals appears to have been based on a mistaken understanding that measurable goals must consist of pollutant reduction targets to be achieved by the corresponding BMPs.

Today's rule requires the operator to submit either measurable goals that serve as BMP design objectives or goals that quantify the progress of implementation of the actions or performance of the permittee's BMPs. At a minimum, the required measurable goals should describe specific actions taken by the permittee to implement each BMP and the frequency and the dates for such actions. Although the operator may choose to do so, it is not required to submit goals that measure whether a BMP or combination of BMPs is effective in achieving a specific result in terms of storm water discharge quality. For example, a measurable goal might involve a commitment to inspect a given number of drainage areas of the collection system for illicit connections by a certain date. The measurable goal need not commit to achieving a specific amount of pollutant reduction through the elimination of illicit connections. Other measurable goals could include the date by which public education materials would be developed, a certain percentage of the community participating in a clean-up campaign, the development of a mechanism to address construction site runoff, and a reduction in the percentage of imperviousness associated with new development projects.

To reduce the risk that permittees will develop inadequate BMPs, EPA intends to develop a menu of BMPs to assist the operators of regulated small MS4s with the development of municipal programs. States may also develop a menu of BMPs. Today's rule provides that the measurable goals that demonstrate compliance with the minimum control measures in §§ 122.34(b)(3) through (b)(6) do not have to be met if the State or EPA has not issued a menu of BMPs at the time the MS4 submits its NOI. Commenters pointed out that the proposed rule would have

made the measurable goals unenforceable if the menu of BMPs was not available, but the proposal was silent as to the enforceability of the implementation of BMPs. Today's rule clarifies that the operators are not free to do nothing prior to the issuance of a menu of BMPs; they still must make a good faith effort to implement the BMPs designed to comply with each measure. See § 122.34(d)(2). The operators would not, however, be liable for failure to meet its measurable goals if a menu of BMPs was not available at the time they submit their NOI.

The proposed rule provision in § 123.35 stated that the "[f]ailure to issue the menu of BMPs would not affect the legal status of the general permit." This concept is included in the final rule in § 122.34(d)(2)'s clarification that the permittee still must comply with other requirements of the general permit.

Unlike the proposed rule, today's rule does not require that each BMP in the menu developed by the State or EPA be regionally appropriate, cost-effective and field-tested. Various commenters criticized those criteria as unworkable, and one described them as "ripe for ambiguity and abuse." Other commenters feared that the operators of regulated small MS4s would never be required to achieve their goals until menus were developed that were cost-effective, field-tested and appropriate for every conceivable subregion.

While some municipal commenters supported the requirement that a menu of BMPs be made available that included BMPs that had been determined to be regionally appropriate, field-tested and cost-effective, others raised concerns that they would be restricted to a limited menu. Some commenters supported such a detailed menu because they thought they would only be able to select BMPs that were on the menu, while others thought that it was the permitting authority's responsibility to develop BMPs narrowly tailored to their situation. In response, EPA notes that the operators will not be restricted to implementing only, or all of, the BMPs included on the menu. Since the menu does not require permittees to implement the BMPs included on the menu, it is also not necessary to apply the public notice and other procedures that some commenters thought should be applied to the development of the menu of BMPs.

The purpose of the BMP menu is to provide guidance to assist the operators of regulated small MS4s with the development and refinement of their local program, not to limit their options. Permittees may implement BMPs other

than those on the menu unless a State restricts its permittees to specific BMPs. To the extent possible, EPA will develop a menu of BMPs that describes the appropriateness of BMPs to specific regions, whether the BMPs have been field-tested, and their approximate costs. The menu, however, is not intended to relieve permittees of the need to implement BMPs that are appropriate for their specific circumstances.

If there are no known relevant BMPs for a specific circumstance, a permittee has the option of developing and implementing pilot BMPs that may be better suited to their circumstances. Where BMPs are experimental, the permittee should consider committing to measurable goals that address its schedule for implementing its selected BMPs rather than goals of achieving specific pollutant reductions. If the BMPs implemented by the permittee do not achieve the desired objective, the permittee may be required to commit to different or revised BMPs.

As stated in § 123.35(g), EPA is committed to issuing a menu of BMPs prior to the deadline for the issuance of permits. This menu would serve as guidance for all operators of regulated small MS4s nationwide. After developing the initial menu of BMPs, EPA intends to periodically modify, update, and supplement the menu of BMPs based on the assessments of the MS4 storm water program and research. States may rely on EPA's menu of BMPs or issue their own. If States develop their own menus, they would constitute additional guidance (or perhaps requirements in some States) for the operators to follow. Several commenters were confused by the proposed rule language that stated that States must provide or issue a menu of BMPs and, if they fail to do so, EPA "may" do so. Some read this language as not requiring either EPA or the State to develop the menu. EPA had intended that it would develop a menu and that States could either provide the EPA developed menu or one developed by the State.

EPA has dropped the proposed language that States "must" develop the menu of BMPs. Some commenters thought that it was inappropriate to require States to issue guidance. A menu of BMPs issued by either EPA or a permittee's State will satisfy the condition in § 122.34(d) that a regulatory authority provide a menu of BMPs. A State could require its permittees to follow its menu of BMPs provided that they are adequate to implement § 122.34(b).

Several commenters raised concerns that operators of small MS4s could be

required to submit their BMPs and measurable goals before EPA or the State has issued a menu of BMPs. EPA has assumed primary responsibility for developing a menu of BMPs to minimize the possibility of this occurring. Should a general permit be issued before a menu of BMPs is available, the permit writer would have the option of delaying the date by which the identification of the BMPs and measurable goals must be submitted to the permitting authority until some time after a menu of BMPs is available.

Several municipal commenters raised concerns that they would begin to develop a program only to be later told by the permitting authority or challenged in a citizen suit that their BMPs were inadequate. They expressed a need for certainty regarding what their permit required. Several commenters suggested that EPA require permitting authorities to approve or disapprove the submitted BMPs and measurable goals. EPA disagrees that formal approval or disapproval by the permitting authority is needed.

EPA acknowledges that the lack of a formal approval process does place on the permittee some responsibility for designing and determining the adequacy of its BMPs. Once the permittee has submitted its BMPs to the permitting authority as part of its NOI, it must implement them in order to achieve the corresponding measurable goals. EPA does not believe that this results in the uncertainty to the extent expressed by some commenters or unduly expose the permittee to the risk of citizen suit. If the permit is very specific regarding what the permittee must do, then the uncertainty is eliminated. If the permit is less prescriptive, the permittee has greater latitude in determining for itself what constitutes an adequate program. A citizen suit could impose liability on the permittee only if the program that it develops and implements clearly does not satisfy the requirements of the general permit. EPA believes today's approach strikes a balance between the competing goals of providing certainty as to what constitutes an adequate program and providing flexibility to the permittees.

Commenters were divided on whether five years was a reasonable and expeditious schedule for a MS4 to implement its program. Some thought that it was an appropriate amount of time to allow for the development and implementation of adequate programs. One questioned whether the permittee had to be implementing all of its program within that time, and suggested that there may be cases where a permitting authority would need

flexibility to allow more time. One commenter suggested that five years is too long and would amount to a relaxation of implementation in their area. EPA believes it will take considerable time to complete the tasks of initially developing a program, commencing to implement it, and achieving results. EPA notes, however, that full implementation of an appropriate program must occur as expeditiously as possible, and not later than five years.

EPA solicited comment on how an NOI form might best be formatted to allow for measurable goal information (e.g., through the use of check boxes or narrative descriptions) while taking into account the Agency's intention to facilitate computer tracking. All commenters supported the development of a checklist NOI, but most noted that there would need to be room for additional information to cover unusual situations. One noted that, while a summary of measurable goals might be reduced to one sheet, attachments that more fully described the program and the planned BMPs would be necessary. EPA agrees that in most cases a "checklist" will not be able to capture the information on what BMPs a permittee intends to implement and its measurable goals for their implementation. EPA will continue to consider whether to develop a model NOI form and make it available for permitting authorities that choose to use it. What will be required on an MS4's NOI, however, is more extensive than what is usually required on an NOI, so a "form" NOI for MS4s may be impractical.

*ii. Individual Permit Application for a § 122.34(b) program.* In some cases, an operator of a regulated small MS4s may seek coverage under an individual NPDES permit, either because it chooses to do so or because the NPDES permitting authority has not made the general permit option available to that source. For small MS4s that are to implement a § 122.34(b) program in today's rule, EPA is promulgating simplified individual permit application requirements at § 122.33(b)(2)(i). Under the simplified individual permit application requirements, the operator submits an application to the NPDES permitting authority that includes the information required under § 122.21(f) and an estimate of square mileage served by the small MS4. They are also required to supply the BMP and measurable goal information required under § 122.34(d). Consistent with CWA section 308 and analogous State law, the permitting authority could request any additional information to gain a better

understanding of the system and the areas draining into the system.

Commenters suggested that the requirements of § 122.21(f) are not necessarily applicable to a small MS4. One suggested that it was not appropriate to require the following information: a description of the activities conducted by the applicant which require it to obtain an NPDES permit; the name, mailing address, and location of the facility; and up to four Standard Industrial Classification ("SIC") codes which best reflect the principal products or services provided by the facility. In response, EPA notes that the requirements in § 122.21(f) are generic application requirements applicable to NPDES applicants. With the exception of the SIC code requirement, EPA believes that they are applicable to MS4s. In the SIC code portion of the standard application, the applicant may simply put "not applicable."

One commenter asked that EPA clarify whether § 122.21(f)(5)'s requirement to indicate "whether the facility is located on Indian lands," referred to tribal lands, Indian country, or Indian reservations. For some local governments this is a complex issue with no easy "yes" or "no" answer. See the discussion in the Section II.F in the proposal to today's rule regarding what tribal lands are subject to the federal trust responsibility for purposes of the NPDES program.

One commenter suggested that the application should not have to list the permits and approvals required under § 122.21(f)(6). EPA notes that the applicant must only list the environmental permits that the applicant has received that cover the small MS4. The applicant is not required to list permits for other operations conducted by the small MS4 operator (e.g., for an operation of an airport or landfill). Again, in most cases the applicant could respond "not applicable" to this portion of the application.

One commenter suggested that the topographic map requirement of § 122.21(f)(7) was completely different from, and significantly more onerous than, the mapping requirement outlined in the proposed rule at § 122.34(b)(3)(i). EPA agrees and has modified the final rule to clarify that a map that satisfies the requirements of § 122.34(b)(3)(i) also satisfies the map requirements for MS4 applicants seeking individual permits under § 122.33(b)(2)(i).

EPA is adding a new paragraph to § 122.44(k) to clarify that requirements to implement BMPs developed pursuant to CWA 402(p) are appropriate permit



conditions. While such conditions could be included under the existing provision in § 122.44(k)(3) for “practices reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA,” EPA believes it is clearer to specifically list in § 122.44(k) BMPs that implement storm water programs in light of the frequency with which they are used as effluent limitations.

*iii. Alternative Permit Options/Tenth Amendment.* As an alternative to implementing a program that addresses each of the six minimum measures according to the requirements of § 122.34(b), today’s rule provides the operators of regulated small MS4s with the option of applying for an individual permit under existing § 122.26(d). See § 122.33(b)(2)(ii). If a system operator does not want to be held accountable for implementation of each of the minimum measures, an individual permit option under § 122.33(b)(2)(ii) remains available. (As explained in the next section of this preamble, § 122.35(b) also provides an opportunity for relief from permit obligations for some of the minimum measures, but that relief exists within the framework of the minimum measures.)

EPA originally drafted the individual permit application requirements in § 122.26(d) to apply to medium and large MS4s. Today’s rule abbreviates the individual permit application requirements for small MS4s. Although EPA believes that the storm water management program requirements of § 122.34, including the minimum measures, provide the most appropriate means to control pollutants from most small MS4s, the Agency does recognize that the operators of some small MS4s may prefer more individualized permit requirements. Among other possible reasons, an operator may seek to avoid having to “regulate” third parties discharging into the separate storm sewer system. Alternatively, an operator may determine that structural controls, such as constructed wetlands, are more appropriate or effective to address the discharges that would otherwise be addressed under the construction and/or development/redevelopment measures.

Some MS4s commenters alleged that an absolute requirement to implement the minimum measures violates the Tenth Amendment to the U.S. Constitution. While EPA disagrees that requiring MS4s to implement the minimum measures would violate the Constitution, today’s rule does provide small MS4s with the option of developing more individualized measures to reduce the pollutants and

pollution associated with urban storm water that will be regulated under today’s rule.

Some commenters specifically objected that § 122.34’s minimum measures for small MS4s violate the Tenth Amendment insofar as they require the operators of MS4s to regulate third parties. The minimum measures include requirements for small MS4 operators to prohibit certain non-storm water discharges, control storm water discharges from construction greater than one acre, and take other actions to control third party sources of storm water discharges into their MS4s. Commenters also argued that it was inappropriate for EPA to require local governments to enact ordinances that will consume local revenues and put local governments in the position of bearing the political responsibility for implementing the program. One commenter argued that EPA was prohibited from conditioning the issuance of an NPDES permit upon the small MS4 operators waiving their constitutional right to be free from such requirements to regulate third parties. The Agency replies to each comment in turn.

Because the rule does rely on local governments—who operate municipal separate storm sewer systems—to regulate discharges from third parties into storm sewers, EPA acknowledges that the rule implicates the Tenth Amendment and constitutional principles of federalism. EPA disagrees, however, that today’s rule is inconsistent with federalism principles. [As political subdivisions of States, municipalities enjoy the same protections as States under the Tenth Amendment.]

The Supreme Court has interpreted the Tenth Amendment to preclude federal actions that compel States or their political subdivisions to enact or administer a federal regulatory program. See *New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 117 S.Ct. 2365 (1997). The *Printz* case, however, did acknowledge that the restriction does not apply when federal requirements of general applicability—requirements that regulate all parties engaging in a particular activity—do not excessively interfere with the functioning of State governments when those requirements are applied to States (or their political subdivisions). See *Printz*, 117 S.Ct. at 2383.

Today’s rule imposes a federal requirement of general applicability, namely, the requirement to obtain and comply with an NPDES permit, on municipalities that operate a municipal separate storm sewer system. By virtue

of this rule, the permit will require the municipality/storm sewer operator to develop a storm water control program. The rule specifies the components of the control program, which are primarily “management”-type controls, for example, municipal regulation of third party storm water discharges associated with construction, as well as development and redevelopment, when those discharges would enter the municipal system.

Unlike the circumstances reviewed in the *New York* and *Printz* cases, today’s rule merely applies a generally applicable requirement (the CWA permit requirement) to municipal point sources. The CWA establishes a generally applicable requirement to obtain an NPDES permit to authorize point source discharge to waters of the United States. Because municipalities own and operate separate storm sewers, including storm sewers into which third parties may discharge pollutants, NPDES permits may require municipalities to control the discharge of pollutants into the storm sewers in the first instance. Because NPDES permits can impose end-of-pipe numeric effluent limits, narrative effluent limits in the form of “management” program requirements are also within the scope of Clean Water Act authority. As noted above, however, EPA believes that such narrative limitations are the most appropriate form of effluent limitation for these types of permits. For municipal separate storm sewer permits, CWA section 402(p)(3)(B)(iii) specifically authorizes “controls to reduce pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.”

The Agency did not design the minimum measures in § 122.34 to “commandeer” state regulatory mechanisms, but rather to reduce pollutant discharges from small MS4s. The permit requirement in CWA section 402 is a requirement of general applicability. The operator of a small MS4 that does not prohibit and/or control discharges into its system essentially accepts “title” for those discharges. At a minimum, by providing free and open access to the MS4s that convey discharges to the waters of the United States, the municipal storm sewer system enables water quality impairment by third parties. Section 122.34 requires the operator of a regulated small MS4 to control a third

party only to the extent that the MS4 collection system receives pollutants from that third party and discharges it to the waters of the United States. The operators of regulated small MS4s cannot passively receive and discharge pollutants from third parties. The Agency concedes that administration of a municipal program will consume limited local revenues for implementation; but those consequences stem from the municipal operator's identity as a permitted sewer system operator. The Tenth Amendment does not create a blanket municipal immunity from generally applicable requirements. Development of a program based on the minimum measures and implementation of that program should not "excessively interfere" with the functioning of municipal government, especially given the "practicability" threshold under CWA section 402(p)(3)(B)(iii).

As noted above, today's rule also allows regulated small MS4s to opt out of the minimum measures approach. The individual permit option provides for greater flexibility in program implementation and also responds to the comment about requiring a municipal permit applicant's waiver of any arguable constitutional rights. The individual permit option responds to questions about the rule's alleged unconstitutionality by more specifically focusing on the pollutants discharged from municipal point sources. Today's rule gives operators of MS4s the option to seek an individual permit that varies from the minimum measures/management approach that is otherwise specified in today's rule. Even if the minimum measures approach was constitutionally suspect, a requirement that standing alone would violate constitutional principles of federalism does not raise concerns if the entity subject to the requirement may opt for an alternative action that does not raise a federalism issue.

For municipal system operators who seek to avoid third party regulation according to all or some of the minimum measures, § 122.26(d) requires the operator to submit a narrative description of its storm water sewer system and any existing storm water control program, as well as the monitoring data to enable the permit writer to develop appropriate permit conditions. The permit writer can then develop permit conditions and limitations that vary from the six minimum measures prescribed in today's rule. The information will enable the permit writer to develop an NPDES permit that will result in pollutant reduction to the maximum

extent practicable. *See NRDC v. EPA*, 966 F.2d at 1308, n17. If determined appropriate under CWA section 402(p)(3)(B)(iii), for example BMPs to meet water quality standards, the permit could also incorporate any more stringent or prescriptive effluent limits based on the individual permit application information.

For small MS4 operators seeking an individual permit, both Part 1 and Part 2 of the application requirements in § 122.26(d)(1) and (2) are required to be submitted within 3 years and 90 days of the date of publication of this **Federal Register** notice. Some of the information required in Part 1 will necessarily have to be developed by the permit applicant prior to the development of Part 2 of the application. The permit applicant should coordinate with its permitting authority regarding the timing of review of the information.

The operators of regulated small MS4s that apply under § 122.26(d) may apply to implement certain of the § 122.34(b) minimum control measures, and thereby focus the necessary evaluation for additional limitations on alternative controls to the § 122.34(b) measures that the small MS4 will not implement. The permit writer may determine "equivalency" for some or all of the minimum measures by developing a rough estimate of the pollutant reduction that would be achieved if the MS4 implemented the § 122.34 minimum measure and to incorporate that pollutant reduction estimate in the small MS4's individual permit as an effluent limitation. The Agency recognizes that, based on current information, any such estimates will probably have a wide range.

Anticipation of this wide range is one of the reasons EPA believes MS4 operators need flexibility in determining the mix of BMPs (under the minimum measures) to achieve water quality objectives. Therefore, for example, if a system operator seeks to employ an alternative that involves structural controls, wide ranges will probably be associated with gross pollutant reduction estimates. Permit writers will undoubtedly develop other ways to ensure that permit limits ensure reduction of pollutants to the maximum extent practicable.

Small MS4 operators that pursue this individual permit option do not need to submit details about their future program requirements (e.g., the MS4's future plans to obtain legal authority required by §§ 122.26(d)(1)(ii) and (d)(2)). A small MS4 operator might elect to supply such information if it intends for the permit writer to take those plans into account when

developing the small MS4's permit conditions.

Several operators of small MS4s commented that they currently lacked the authority they would need to implement one or more of the minimum measures in § 122.34(b). Today's rule recognizes that the operators of some small MS4s might not have the authority under State law to implement one or more of the measures using, for example, an ordinance or other regulatory mechanism. To address these situations, each minimum measure in § 122.34(b) that would require the small MS4 operator to develop an ordinance or other regulatory mechanism states that the operator is only required to implement that requirement to "the extent allowable under State, Tribal or local law." See § 122.34(b)(3)(ii) (illicit discharge elimination), § 122.34(b)(4)(ii) (construction runoff control) and § 122.34(b)(5)(ii) (post-construction storm water management). This regulatory language does not mean that a operator of a small MS4 with ordinance making authority can simply fail to pass an ordinance necessary for a § 122.34(b) program. The reference to "the extent allowable under \* \* \* local law" refers to the local laws of *other* political subdivisions to which the MS4 operator is subject. Rather, a small MS4 operator that seeks to implement a program under section § 122.34(b) may omit a requirement to develop an ordinance or other regulatory mechanism only to the extent its municipal charter, State constitution or other legal authority prevents the operator from exercising the necessary authority. Where the operator cannot obtain the authority to implement any activity that is only required to "the extent allowable under State, Tribal or local law," the operator may satisfy today's rule by administering the remaining § 122.34(b) requirements.

Finally, although today's rule provides operators of small MS4s with an option of applying for a permit under § 122.26(d), States authorized to administer the NPDES program are not required to provide this option. NPDES-authorized States could require all regulated small MS4s to be permitted under the minimum measures management approach in § 122.34 as a matter of State law. Such an approach would be deemed to be equally or more stringent than what is required by today's rule. *See* 40 CFR 123.2(i). The federalism concerns discussed above do not apply to requirements imposed by a State on its political subdivisions.

*iv. Satisfaction of Minimum Measure Obligations by Another Entity.* An operator of a regulated small MS4 may

satisfy the requirement to implement one or more of the six minimum measures in § 122.34(b) by having a third party implement the measure or measures. Today's rule provides a variety of means for small MS4 operators to share responsibility for different aspects of their storm water management program. The means by which the operators of various MS4s share responsibility may affect who is ultimately responsible for performance of the minimum measure and who files the periodic reports on the implementation of the minimum measure. Section 122.35 addresses these issues. The rule describes two different variants on third party implementation with different consequences if the third party fails to implement the measure.

If the permit covering the discharge from a regulated small MS4 identifies the operator as the entity responsible for a particular minimum control measure, then the operator-permittee remains responsible for the implementation of that measure even if another entity has agreed to implement the control measure. Section 122.35(a). Another party may satisfy the operator-permittee's responsibility by implementing the minimum control measure in a manner at least as stringent or prescriptive as the corresponding NPDES permit requirement. If the third party fails to do so, the operator-permittee remains responsible for its performance. The operator of the MS4 should consider entering into an agreement with the third party that acknowledges the responsibility to implement the minimum measure. The operator-permittee's NOI and its annual § 122.34(f)(3) reports submitted to the NPDES permitting authority must identify the third party that is satisfying one or more of the permit obligations. This requirement ensures that the permitting authority is aware which entity is supposed to implement which minimum measures.

If, on the other hand, the regulated small MS4's permit recognizes that an NPDES permittee other than the operator-permittee is responsible for a particular minimum control measure, then the operator-permittee is relieved from the responsibility for implementing that measure. The operator-permittee is also relieved from the responsibility for implementing any measure that the operator's permit indicates will be performed by the NPDES permitting authority. Section 122.35(b). The MS4 operator-permittee would be responsible for implementing the remaining minimum measures.

Today's final rule differs from the proposed version of § 122.35(b), which

stated that, even if the third party's responsibility is recognized in the permit, the MS4 operator-permittee remained responsible for performance if the third party failed to perform the measure consistent with § 122.34(b). Under today's rule, the operator-permittee is relieved from responsibility for performance of a measure if the third party is an NPDES permittee whose permit makes it responsible for performance of the measure (including, for example, a State agency other than the State agency that issues NPDES permits) or if the third party is the NPDES permitting authority itself. Because the permitting authority is acknowledging the third party's responsibility in the permit, commenters thought that the MS4 operator-permittee should not be responsible for ensuring that the other entity is implementing the control measure properly. EPA agrees that the operator-permittee should not be conditionally responsible when the requirements are enforceable against some other NPDES permittee. If the third party fails to perform the minimum measure, the requirements will be enforceable against the third party. In addition, the NPDES permitting authority could reopen the operator-permittee's permit under § 122.62 and modify the permit to make the operator responsible for implementing the measure. A new paragraph has been added to § 122.62 to clarify that the permit may be reopened in such circumstances.

Today's rule also provides that the operator-permittee is not conditionally responsible where it is the State NPDES permitting authority itself that fails to implement the measure. The permitting authority does not need to issue a permit to itself (i.e., to the same State agency that issues the permit) for the sole purpose of relieving the small MS4 from responsibility in the event the State agency does not satisfy its obligation to implement a measure. EPA does not believe that the small MS4 should be responsible in the situation where the NPDES permit issued to the small MS4 operator recognizes that the State agency that issues the permit is responsible for implementing a measure. If the State does fail to implement the measure, the State agency could be held accountable for its commitment in the permit to implement the measure. Where the State does not fulfill its responsibility to implement a measure, a citizen also could petition for withdrawal of the State's NPDES program or it could petition to have the MS4's permit reopened to require the

MS4 operator to implement the measure.

EPA notes that not every State program that addresses erosion and sediment control from construction sites will be adequate to satisfy the requirement that each regulated small MS4 have a program to the extent required by § 122.34(b)(4). For example, although all NPDES States are required to issue NPDES permits for construction activity that disturbs greater than one acre, the State's NPDES permit program will not necessarily be extensive enough to satisfy a regulated small MS4's obligation under § 122.34(b)(4). NPDES States will not necessarily be implementing all of the required elements of that minimum measure, such as procedures for site plan review in each jurisdiction required to develop a program and procedures for receipt and consideration of information submitted by the public on individual construction sites. In order for a State erosion and sediment control program to satisfy a small MS4 operator's obligation to implement § 122.34(b)(4), the State program would have to include all of the elements of that minimum measure.

Where the operator-permittee is itself performing one or more of the minimum measures, the operator-permittee remains responsible for all of the reporting requirements under § 122.34(f)(3). The operator-permittee's reports should identify each entity that is performing the control measures within the geographic jurisdiction of the regulated small MS4. If the other entity also operates a regulated MS4 and files reports on the progress of implementation of the measures within the geographic jurisdiction of the MS4, then the operator-permittee need not include that same information in its own reports.

If the other entity operates a regulated MS4 and is performing all of the minimum measures for the permittee, the permittee is not required to file the reports required by § 122.34(f)(3). This relief from reporting is specified in § 122.35(a).

Section 122.35 addresses the concerns of some commenters who sought relief for governmental facilities that are classified as small MS4s under today's rule. These facilities frequently discharge storm water through another regulated MS4 and could be regulated by that MS4's program. For example, a State owned office complex that operates its storm sewer system in an urbanized area will be regulated as an MS4 under today's rule even though its system may be subject to the storm water controls of the municipality in

which it is located. Today's rule specifically revised the definition of MS4 to recognize that different levels of government often operate MS4s and that each such separate entity (including the federal government) should be responsible for its discharges. If both MS4s agree, the downstream MS4 can develop a storm water management program that regulates the discharge from both MS4s. The upstream small MS4 operator still must submit an NOI that identifies the entity on which the upstream small MS4 operator is relying to satisfy its permit obligations. No reports are required from the upstream small MS4 operator, but the upstream operator must remain in compliance with the downstream MS4 operator's storm water management program. This option allows small MS4s to work together to develop one storm water management program that satisfies the permit obligations of both. If they cannot agree, the upstream small MS4 operator must develop its own program.

As mentioned previously, comments from federal facilities and State organizations that operate MS4s requested that their permit requirements differ from those of MS4s that are political subdivisions of States (cities, towns, counties, etc.). EPA acknowledges that there are differences; e.g., many federal and State facilities do not serve a resident population and thus might require a different approach to public education. EPA believes, however, that MS4s owned by State and federal governments can develop storm water management plans that address the minimum measures. Federal and State owned small MS4s may choose to work with adjacent municipally owned MS4s to develop a unified plan that addresses all of the required measures within the jurisdiction of all of the contiguous MS4s. The options in § 122.35 minimize the burden on small MS4s that are covered by another MS4's program.

One commenter recommended that if one MS4 discharges into a second MS4, the operator of the upstream MS4 should have to provide a copy of its NOI or permit application to the operator of the receiving MS4. EPA did not adopt this recommendation because the NOI and permit application will be publicly available; but EPA does recommend that NPDES permitting authorities consider it as a possible permit requirement. The commenter also suggested that monitoring data should be collected by the upstream MS4 and provided to the downstream MS4. EPA is not adopting such a uniform monitoring requirement because EPA believes it is more appropriate to let the MS4 operators

work out the need for such data. If necessary, the downstream MS4s might want to make such data a condition to allowing the upstream MS4 to connect to its system.

*v. Joint Permit Programs.* Many commenters supported allowing the operators of small MS4s to apply as co-permittees so they each would not have to develop their own storm water management program. Today's rule specifically allows regulated small MS4s to join with either other small MS4s regulated under § 122.34(d) or with medium and large MS4s regulated under § 122.26(d).

As is discussed in the previous section, regulated small MS4s may indicate in their NOIs that another entity is performing one or more of its required minimum control measures. Today's rule under § 122.33(b)(1) also specifically allows the operators of regulated small MS4s to jointly submit an NOI. The joint NOI must clearly indicate which entity is required to implement which control measure in each geographic jurisdiction within the service area of the entire small MS4. The operator of each regulated small MS4 remains responsible for the implementation of each minimum measure for its MS4 (unless, as is discussed in the previous section above, the permit recognizes that another entity is responsible for completing the measure.) The joint NOI, therefore, is legally equivalent to each entity submitting its own NOI. EPA is, however, revising the rule language to specifically authorize the joint submission of NOIs in response to comments that suggested that such explicit authorization might encourage programs to be coordinated on a watershed basis.

Section 122.33(b)(2)(iii) authorizes regulated small MS4s to jointly apply for an individual permit to implement today's rule, where allowed by an NPDES permitting authority. The permit application should contain sufficient information to allow the permitting authority to allocate responsibility among the parties under one of the two permitting options in §§ 122.33(b)(2)(i) and (ii).

Section 122.33(b)(3) of today's rule also allows an operator of a regulated small MS4 to join as a co-permittee in an existing NPDES permit issued to an adjoining medium or large MS4 or source designated under the existing storm water program. This co-permittee option applies only with the agreement of all co-permittees. Under this co-permittee arrangement, the operator of the regulated small MS4 must comply with the terms and conditions of the

applicable permit rather than the permit condition requirements of § 122.34 of today's rule. The regulated small MS4 that wishes to be a co-permittee must comply with the applicable requirements of § 122.26(d), but would not be required to fulfill all the permit application requirements applicable to medium and large MS4s. Specifically, the regulated small MS4 is not required to comply with the application requirements of § 122.26(d)(1)(iii) (Part 1 source identification), § 122.26(d)(1)(iv) (Part 1 discharge characterization), and § 122.26(d)(2)(iii) (Part 2 discharge characterization data). Furthermore, the regulated small MS4 operator could satisfy the requirements in § 122.26(d)(1)(v) (Part 1 management programs) and § 122.26(d)(2)(iv) (Part 2 proposed management program) by referring to the adjoining MS4 operator's existing plan. An operator pursuing this option must describe in the permit modification request how the adjoining MS4's storm water program addresses or needs to be supplemented in order to adequately address discharges from the MS4. The request must also explain the role of the small MS4 operator in coordinating local storm water activities and describe the resources available to accomplish the storm water management plan.

EPA sought comments regarding the appropriateness of the application requirements in these subsections of § 122.26(d). One commenter stated that newly regulated smaller MS4s should not be required to meet the existing regulations' Part II application requirements under § 122.26(d) regarding the control of storm water discharges from industrial activity. EPA disagrees. The smaller MS4 operators designated for regulation in today's rule may satisfy this requirement by referencing the legal authority of the already regulated MS4 program to the extent the newly regulated MS4 will rely on such legal authority to satisfy its permit requirements. If the smaller MS4 operator plans to rely on its own legal authorities, it must identify it in the application. If the smaller MS4 operator does not elect to use its own legal authority, they may file an individual permit application for an alternate program under § 122.33(b)(2)(ii).

The explanatory language in § 122.33(b)(3) recommends that the smaller MS4s designated under today's rule identify how an existing plan "would need to be supplemented in order to adequately address your discharges." One commenter suggested that this must be regulatory language and not guidance. EPA disagrees that this needs to be mandatory language.

Since many of the smaller MS4s designated today are "donut holes" within the geographic jurisdiction of an already regulated MS4, the larger MS4's program generally will be adequate to address the newly regulated MS4's discharges. The small MS4 applicant should consider the adequacy of the existing MS4's program to address the smaller MS4's water quality needs, but EPA is not imposing specific requirements. Where circumstances suggest that the existing program is inadequate with respect to the newly designated MS4 and the applicant does not address the issue, the NPDES permitting authority must require that the existing program be supplemented.

Commenters recommended that the application deadline for smaller MS4s designated today be extended so that existing regulated MS4s would not have to modify their permit in the middle of their permit term, provided that permit renewal would occur within a reasonable time (12 to 18 months) of the deadline. In response, EPA notes that today's rule allows operators of newly designated small MS4s up to three years and 90 days from the promulgation of today's rule to submit an application to be covered under the permit issued to an already regulated MS4. The permitting authority has a reasonable time after receipt of the application to modify the existing permit to include the newly designated source. If an existing MS4's permit is up for renewal in the near future, the operator of a newly designated small MS4 may take that into account when timing its application and the NPDES permitting authority may take that into account when processing the application.

Another commenter suggested that the rule should include a provision to allow permit application requirements for smaller MS4s designated today to be determined by the permitting authority to account for the particular needs/wants of an already regulated MS4 operator. EPA does not believe that the regulations should specifically require this approach. When negotiating whether to include a newly designated MS4 in its program, the already regulated MS4 operator may require the newly designated MS4's operator to provide any information that is necessary.

The co-permitting approach allows small MS4s to take advantage of existing programs to ease the burden of creating their own programs. The operators of regulated small MS4s, however, may find it simpler to apply for a program under today's rule, and to identify the medium or large MS4 operator that is

implementing portions of its § 122.34(b) minimum measures.

#### d. Evaluation and Assessment

Under today's rule, operators of regulated small MS4s are required to evaluate the appropriateness of their identified BMPs and progress toward achieving their identified measurable goals. The purpose of this evaluation is to determine whether or not the MS4 is meeting the requirements of the minimum control measures. The NPDES permitting authority is responsible for determining whether and what types of monitoring needs to be conducted and may require monitoring in accordance with State/Tribe monitoring plans appropriate to the watershed. EPA does not encourage requirements for "end-of-pipe" monitoring for regulated small MS4s. Rather, EPA encourages permitting authorities to carefully examine existing ambient water quality and assess data needs. Permitting authorities should consider a combination of physical, chemical, and biological monitoring or the use of other environmental indicators such as exceedance frequencies of water quality standards, impacted dry weather flows, and increased flooding frequency. (Claytor, R. and W. Brown. 1996. *Environmental Indicators to Assess Storm Water Control Programs and Practices*. Center for Watershed Protection, Silver Spring, MD.) Section II.L., Water Quality Issues, discusses monitoring in greater detail.

As recommended by the Intergovernmental Task Force on Monitoring Water Quality (ITFM), the NPDES permitting authority is encouraged to consider the following watershed objectives in determining monitoring requirements: (1) To characterize water quality and ecosystem health in a watershed over time, (2) to determine causes of existing and future water quality and ecosystem health problems in a watershed and develop a watershed management program, (3) to assess progress of watershed management program or effectiveness of pollution prevention and control practices, and (4) to support documentation of compliance with permit conditions and/or water quality standards. With these objectives in mind, the Agency encourages participation in group monitoring programs that can take advantage of existing monitoring programs undertaken by a variety of governmental and nongovernmental entities. Many States may already have a monitoring program in effect on a watershed basis. The ITFM report is included in the docket for today's rule

(Intergovernmental Task Force on Monitoring Water Quality. 1995. *The Strategy for Improving Water-Quality Monitoring in the United States: Final Report of the Intergovernmental Task Force on Monitoring Water Quality*. Copies can be obtained from: U.S. Geological Survey, Reston, VA.).

EPA expects that many types of entities will have a role in supporting group monitoring activities—including federal agencies, State agencies, the public, and various classes or categories of point source dischargers. Some regulated small MS4s might be required to contribute to such monitoring efforts. EPA expects, however, that their participation in monitoring activities will be relatively limited. For purposes of today's rule, EPA recommends that, in general, NPDES permits for small MS4s should not require the conduct of any additional monitoring beyond monitoring that the small MS4 may be already performing. In the second and subsequent permit terms, EPA expects that some limited ambient monitoring might be appropriately required for perhaps half of the regulated small MS4s. EPA expects that such monitoring will only be done in identified locations for relatively few pollutants of concern. EPA does not anticipate "end-of-pipe" monitoring requirements for regulated small MS4s.

EPA received a wide range of comments on this section of the rule. Some commenters believe that EPA should require monitoring; others want a strong statement that the newly regulated small MS4s should not be required to monitor. Many commenters raised questions about exactly what EPA expects MS4s to do to evaluate and assess their BMPs. EPA has intentionally written today's rule to provide flexibility to both MS4s and permitting authorities regarding appropriate evaluation and assessment. Permitting authorities can specify monitoring or other means of evaluation when writing permits. If additional requirements are not specified, MS4s can decide what they believe is the most appropriate way to evaluate their storm water management program. As mentioned above, EPA expects that the necessity for monitoring and its extent may change from permit cycle to permit cycle. This is another reason for making the evaluation and assessment rule requirements very flexible.

i. *Recordkeeping.* The NPDES permitting authority is required to include at least the minimum appropriate recordkeeping conditions in each permit. Additionally, the NPDES permitting authority can specify that permittees develop, maintain, and/or

submit other records to determine compliance with permit conditions. The MS4 operator must keep these records for at least 3 years but is not required to submit records to the NPDES permitting authority unless specifically directed to do so. The MS4 operator must make the records, including the storm water management program, available to the public at reasonable times during regular business hours (see 40 CFR 122.7 for confidentiality provision). The MS4 operator is also able to assess a reasonable charge for copying and to establish advance notice requirements for members of the public.

EPA received a comment that questioned EPA's authority to require MS4s to make their records available to the public. EPA disagrees with the commenter and believes that the CWA does give EPA the authority to require that MS4 records be available. It is also more practical for the public to request records directly from the MS4 than to request them from EPA who would then make the request to the MS4. Based on comments, EPA revised the proposed rule so as not to limit the time for advance notice requirements to 2 business days.

*ii. Reporting.* Under today's rule, the operator of a regulated small MS4 is required to submit annual reports to the NPDES permitting authority for the first permit term. For subsequent permit terms, the MS4 operator must submit reports in years 2 and 4 unless the NPDES permitting authority requires more frequent reports. EPA received several comments supporting this timing for report submittal. Other commenters suggested that annual reports during the first permit cycle are too burdensome and not necessary. EPA believes that annual reports are needed during the first 5-year permit term to help permitting authorities track and assess the development of MS4 programs, which should be established by the end of the initial term. Information contained in these reports can also be used to respond to public inquiries.

The report must include (1) the status of compliance with permit conditions, an assessment of the appropriateness of identified BMPs and progress toward achieving measurable goals for each of the minimum control measures, (2) results of information collected and analyzed, including monitoring data, if any, during the reporting period, (3) a summary of what storm water activities the permittee plans to undertake during the next reporting cycle, and (4) a change in any identified measurable goal(s) that apply to the program elements.

The NPDES permitting authority is encouraged to provide a brief two-page reporting format to facilitate compiling and analyzing the data from submitted reports. EPA does not believe that submittal of a brief annual report of this nature is overly burdensome, and has not changed the required reporting time frame from the proposal. The permitting authority will use the reports in evaluating compliance with permit conditions and, where necessary, will modify the permit conditions to address changed conditions.

*iii. Permit-As-A-Shield.* Section 122.36 describes the scope of authorization (i.e. "permit-as-a-shield") under an NPDES permit as provided by section 402(k) of the CWA. Section 402(k) provides that compliance with an NPDES permit is deemed compliance, for purposes of enforcement under CWA sections 309 and 505, with CWA sections 301, 302, 306, 307, and 403, except for any standard imposed under section 307 for toxic pollutants injurious to human health.

EPA's Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits, originally issued on July 1, 1994, and revised on April 11, 1995, provides additional information on this matter.

#### e. Other Applicable NPDES Requirements

Any NPDES permit issued to an operator of a regulated small MS4 must also include other applicable NPDES permit requirements and standard conditions, specifically the applicable requirements and conditions at 40 CFR 122.41 through 122.49. Reporting requirements for regulated small MS4s are governed by § 122.34 and not the existing requirements for medium and large MS4s at § 122.42(c). In addition, the NPDES permitting authority is encouraged to consult the Interim Permitting Approach, issued on August 1, 1996. The discussion on the Interim Permitting Approach in Section II.L.1, Water Quality Based Effluent Limits, provides more information. The provisions of §§ 122.41 through 122.49 establish permit conditions and limitations that are broadly applicable to the entire range of NPDES permits. These provisions should be interpreted in a manner that is consistent with provisions that address specific classes or categories of discharges. For example, § 122.44(d) is a general requirement that each NPDES permit shall include conditions to meet water quality standards. This requirement will be met by the specific approach outlined in today's rule for the implementation of BMPs. BMPs are the most appropriate

form of effluent limitations to satisfy technology requirements and water quality-based requirements in MS4 permits (see the introduction to Section II.H.3, Municipal Permit Requirements, Section II.H.3.h, Reevaluation of Rule, and the discussion of the Interim Permitting Policy in Section II.L.1. below).

#### f. Enforceability

NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in CWA sections 309, 504, and 505 or under similar water pollution enforcement provisions of State, tribal or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water Act is deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403 (except any standard imposed under section 307 for toxic pollutants injurious to human health).

#### g. Deadlines

Today's final rule includes "expeditious deadlines" as directed by CWA section 402(p)(6). In proposed § 122.26(e), the permit application for the "ISTEA" facilities was maintained as August 7, 2001 and the permit application deadline for storm water discharges associated with other construction activity was established as 3 years and 90 days from the final rule date. In proposed § 122.33(c)(1), operators of regulated small MS4s were required to seek permit coverage within 3 years and 90 days from the date of publication of the final rule. In proposed § 122.33(c)(2), operators of regulated small MS4s designated by the NPDES permitting authority on a local basis under § 122.32(a)(2) must seek coverage under an NPDES permit within 60 days of notice, unless the NPDES permitting authority specifies a later date.

In order to increase the clarity of today's final rule, EPA has changed the location of some of the above requirements. All application deadlines for both Phase I and Phase II are now listed or referenced in § 122.26(e). Section 122.26(e)(1) contains the deadlines for storm water associated with industrial activity. Paragraph (i) has been changed to correct a typographical error. Paragraph (ii) has been revised to reflect the changed application date for "ISTEA" facilities. (See discussion in section I.3, ISTEA Sources). The application deadline for storm water discharges associated with other construction activity is now in a new § 122.26(e)(8). The application deadline for regulated small MS4s

remains in § 122.33(c) because this section is written in “readable regulation” format, but it is also described in a new § 122.26(e)(9).

Under today’s rule, permitting authorities are allowed up to 3 years to issue a general permit and MS4s designated under § 122.32(a)(1) are allowed up to 3 years and 90 days to submit a permit application. Operators of regulated small MS4s that choose to be a co-permittee with an adjoining MS4 with an existing NPDES storm water permit must apply for a modification of that permit within the same time frame. Several commenters stated that 90 days was not adequate time to submit an NOI. This might be true if facilities did not start developing their storm water program until publication of their general permit. In fact, municipalities should start developing their storm water program upon publication of today’s final rule, if they have not already done so. Municipalities that are uncertain if they fall within the urbanized area should ask their permitting authority. EPA believes that municipalities should not automatically take three years and 90 days to develop a program and submit their NOI. Three years is the maximum amount of time to issue a general permit. MS4s that are automatically designated under today’s rule may have less than 3 years and 90 days if the permitting authority issues a permit that requires submission of NOIs before that time. EPA encourages States to modify their NPDES program to include storm water and issue their permits as soon as possible. It is important for permitting authorities to keep their municipalities informed of their progress in developing or modifying their NPDES storm water requirements.

EPA recognizes that MS4s brought into the program due to the 2000 Census calculations do not have as much time to develop a program as those already designated from the 1990 Census. However, the official Bureau of the Census urbanized area calculation for the 2000 Census is expected to be published in the **Federal Register** in the spring of 2002, which should give the potentially affected MS4s adequate time to prepare for compliance under the applicable permit. However, if the publication of this information is delayed, MS4s in newly designated urbanized areas will have 180 days from the time the new designations are published to submit an NOI, consistent with the time frame for other regulated MS4s that are designated after promulgation of the rule.

The proposed application deadline for MS4s designated under § 122.32(a)(2)

was within 60 days of notice. Many commenters stated that 60 days does not provide adequate time for the preparation of an NOI or permit application. EPA agrees that newly designated MS4s may not be aware that they might be designated since the permitting authority could take several years to develop designation criteria. EPA has decided that the application time frame for these facilities should be consistent with the 180 days allowed for facilities designated under §§ 122.26(a)(9)(i)(C) and (D). Section 122.33(c)(2) of today’s final rule contains the modified time frame of 180 days to apply for coverage.

#### h. Reevaluation of Rule

The municipal caucus of the Storm Water Phase II FACA Subcommittee asked EPA to demonstrate its commitment to revisit the municipal requirements of today’s rule and make changes where necessary after evaluating the storm water program and researching the effectiveness of municipal BMPs. In § 122.37 of today’s final rule, EPA commits to revisiting the regulations for the municipal storm water discharge control program after completion of the first two permit terms. EPA intends to use this time to work closely with stakeholders on research efforts. Gathering and analyzing data related to the storm water program, including data regarding the effectiveness of BMPs, is critical to EPA’s storm water program evaluation. EPA does not intend to change today’s NPDES municipal storm water program until the end of this period, except under the following circumstances: a court decision requires changes; a technical change is necessary for implementation; or the CWA is modified, thereby requiring changes. After careful analysis, EPA might also consider changes from consensus-based stakeholder requests regarding requirements applicable to newly regulated MS4s. EPA will apply the August 1, 1996, Interim Permitting Approach to today’s program during this interim period and encourages all permitting authorities to use this approach in municipal storm water permits for newly regulated MS4s and in determining MS4 permit requirements under a TMDL approach. After careful consideration of the data, EPA will make modifications as necessary.

EPA received comments that supported waiting two permit cycles before re-evaluating the rule and other comments that requested re-evaluation much sooner. EPA anticipates two full permit cycles are necessary to obtain

enough data to significantly evaluate the rule. The re-evaluation time frame of 13 years from today remains as proposed.

#### I. Other Designated Storm Water Discharges

##### 1. Discharges Associated with Small Construction Activity

Section 122.26(b)(15) of today’s rule designates certain construction activities for regulation as “storm water discharges associated with small construction activity.” Specifically, storm water discharges from construction activity equal to or greater than 1 acre and less than 5 acres are automatically designated except in those circumstances where the operator (i.e., person responsible for discharges that might occur) certifies to the permitting authority that one of two specific waiver circumstances (described in section b. below) applies. Sites below one acre may be designated under § 122.26(b)(15)(ii) where necessary to protect water quality.

Today’s rule regulates these construction-related storm water sources under CWA section 402(p)(6) to protect water quality rather than under CWA section 402(p)(2). Designation under 402(p)(6) gives States and EPA the flexibility to waive the permit requirement for construction activity that is not likely to impair water quality, and to designate additional sources below one acre that are likely to cause water quality impairment. Thus, the one acre threshold of today’s rule is not an absolute threshold like the five acre threshold that applies under the existing storm water rule.

Today’s rule regulating certain storm water discharges from construction activity disturbing less than 5 acres is consistent with the 9th Circuit remand in *NRDC v. EPA*, 966 F.2d 1292 (9th Cir. 1992). In that case, the court remanded portions of the existing storm water regulations related to discharges from construction sites. The existing Phase I regulations define “storm water discharges associated with industrial activity” to include storm water discharges from construction sites disturbing 5 acres or more of total land area (see 40 CFR 122.26(b)(14)(x)). In its decision, the court concluded that the 5-acre threshold was improper because the Agency had failed to identify information “to support its perception that construction activities on less than 5 acres are non-industrial in nature” (966 F.2d at 1306). The court remanded the exemption to EPA for further proceedings (966 F.2d at 1310). EPA’s objectives in today’s action include an effort to (1) address the 9th Circuit



remand to reconsider regulation of storm water discharges from construction activities that disturb less than 5 acres of land, (2) address water quality concerns associated with such activities, and (3) balance conflicting recommendations and concerns of stakeholders in the regulation of additional construction activity.

EPA responded to the Ninth Circuit's decision by designating discharges from construction activities that disturb between 1 and 5 acres as "discharges associated with small construction activity" under CWA section 402(p)(6), rather than as "discharges associated with industrial activity" under CWA section 402(p)(2)(B). Although a size criterion alone may be an indicator of whether runoff from construction sites between 1 and 5 acres is "associated with industrial activity," the Agency is instead relying on a size threshold in tandem with provisions that allow for designations and waivers based on potential for "predicted water quality impairments" to regulate construction sites between 1 and 5 acres under CWA section 402(p)(6). This approach was chosen by the Agency for the sake of simplicity and certainty and, most importantly, to protect water quality consistent with the mandate of CWA section 402(p)(6). Today's rule also includes extended application deadlines for this new category of dischargers under the authority of CWA section 402(p)(6) (see § 122.26(e)(8) of today's rule).

In today's rule, EPA is regulating storm water discharges from additional construction sites to better protect the Nation's waters, while remaining sensitive to a concern that the Agency should not regulate discharges from construction sites that might not or do not have adverse water quality impacts. EPA believes that today's rule will successfully accomplish this objective by establishing a 1-acre threshold nationwide that includes the flexibility to allow the permitting authority to both waive requirements for discharges from sites that are not expected to cause adverse water quality impacts and to designate discharges from sites below 1-acre based on adverse water quality impacts.

In addition to the diminishing water quality benefits of regulating all sites below one acre, the Agency relied on practical considerations in establishing a one acre threshold and not setting a lower threshold. Regardless of the threshold established by EPA, a NPDES permit can only be required if a construction site has a point source discharge. A point source discharge means that pollutants are added to

waters of the United States through a discernible, confined, discrete conveyance. "Sheet flow" runoff from a small construction site would not result in a point source discharge unless and until it channelized. As the amount of disturbed land surface decreases, precipitation is less likely to channelize and create a "point source" discharge (assuming the absence of steep slopes or other factors that lead to increased channelization). Categorical designation of very small sites may create confusion about applicability of the NPDES permitting program to those sites. EPA's one acre threshold reflects, in part, the need to recognize that smaller sites are less likely to result in point source discharges. Of course, the NPDES permitting authority could designate smaller sites (below one acre, assuming point source discharges occur from the smaller designated sites) for regulation if a watershed or other local assessment indicated the need to do so. The Phase II rule includes this designation authority at 40 CFR 122.26(a)(9)(i)(D) and (b)(15)(ii).

The one acre threshold also provides an administrative tool for more easily identifying those sites that are identified for coverage by the rule (but may receive a waiver) and those that are not automatically covered (but may be designated for inclusion). Although all construction sites less than five acres could have a significant water quality impact cumulatively, EPA is automatically designating for permit coverage only those storm water discharges from construction sites that disturb land equal to or greater than one acre. Categorical regulation of discharges from construction below this one acre threshold would overwhelm the resources of permitting authorities and might not yield corresponding water quality benefits. Construction activities that disturb less than one acre make up, in total, a very small percentage of the total land disturbance from construction nationwide. The one acre threshold is reasonable for accomplishing the water quality goals of CWA section 402(p)(6) because it results in 97.5% of the total acreage disturbed by construction being designated for coverage by the NPDES storm water program, while excluding from automatic coverage the numerous smaller sites that represent 24.7% of the total number of construction sites.

Some commenters believed that EPA has not adequately identified water quality problems associated with storm water discharges from construction activity disturbing less than five acres. Other commenters believed that storm water discharges from small

construction activity is a significant water quality problem nationwide. Section I.B.3, Construction Site Runoff, provides a detailed discussion of adverse water quality impacts resulting from construction site storm water discharges. EPA is regulating storm water discharges from construction activity disturbing between 1 and 5 acres because the cumulative impact of many sources, and not just a single identified source, is typically the cause for water quality impairments, particularly for sediment-related water quality standards.

Several commenters requested that EPA regulate discharges from small construction activity as "discharges associated with industrial activity" under CWA 402(p)(4) and not, as proposed, as "storm water discharges associated with other activity" under CWA 402(p)(6). EPA is regulating discharges from small construction sites as "small construction activity" under the authority of CWA section 402(p)(6), rather than section 402(p)(4), to ensure that regulation of these sources is water quality-sensitive. CWA section 402(p)(6) affords the opportunity for designations and waivers of sources based on potential for "predicted water quality impairments." Regulation of storm water "associated with industrial activity" does not necessarily focus regulation to protect water quality.

#### a. Scope

The definition of "storm water discharges associated with small construction activity" includes discharges from construction activities, such as clearing, grading, and excavating activities, that result in the disturbance of equal to or greater than 1 acre and less than 5 acres (see § 122.26(b)(15)(i)). Such activities could include: road building; construction of residential houses, office buildings, or industrial buildings; or demolition activity. The definition of "storm water discharges associated with small construction activity" also includes any other construction activity, regardless of size, designated based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States (§ 122.26(b)(15)(ii)). This designation is made by the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator.

For the purposes of today's rule, the definition of "storm water discharges associated with small construction activity" includes discharges from activities disturbing less than 1 acre if that construction activity is part of a

"larger common plan of development or sale" with a planned disturbance of equal to or greater than 1 acre of land. A "larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan, e.g., a housing development of five ¼ acre lots (§ 122.26(b)(15)(i)).

In addition to the regulatory text for smaller construction, the Agency is also revising the existing text of § 122.26(b)(14)(x) to clarify EPA's intention regarding construction projects involving a larger common plan of development or sale ultimately disturbing 5 or more acres. Operators of such sites are required to seek coverage under an NPDES permit regardless of the number of lots in the larger plan because designation for permit coverage is based on the total amount of land area to be disturbed under the common plan. This designation attempts to address the potential cumulative effects of numerous construction activities concentrated in a given area.

Several commenters asked that EPA allow the permitting authority to set the appropriate size threshold based on water quality studies. While EPA agrees that location-specific water quality studies provide an ideal information base from which to make regulatory decisions, today's rule establishes a default standard for regulation in the absence of location-specific studies. The rule does allow for deviation from the default standard through additional designations and waivers, however, when supported by location-specific water quality information. The rule codifies the ability of permitting authorities to provide waivers for sites greater than or equal to one acre (the default standard) and designate additional discharges from small sites below one acre when location-specific information suggests that the default 1 acre standard is either unnecessary (waivers) or too limited (designations) to protect water quality.

Some commenters wanted EPA to base the regulation of storm water discharges from construction sites not only on size, but also on the duration and intensity of activity occurring on the site. EPA believes that a national 1-acre threshold, in combination with waivers and additional designations, is the most effective and simplest way to address adverse water quality impacts from storm water from small construction sites. Moreover, as discussed below, the waiver for rainfall erosivity does account for projects of limited duration. EPA believes,

however, that the intensity of activity occurring on-site would be a very difficult condition to quantify.

Many commenters requested that EPA maintain the 5 acre threshold from the existing regulations, which include opportunities for site-specific designation, as the regulatory scope for regulating storm water from construction sites, i.e., that the Agency not automatically regulate storm water discharges from sites less than 5 acres. Several commenters wanted construction requirements to be applied to sites smaller than 1 acre, while some commenters suggested alternative thresholds of 2 or 3 acres. The rest of the commenters supported the 1 acre threshold. None of the commenters presented any data or rationales to support a specific size threshold.

EPA examined alternative size thresholds, including 0.5 acre, 1 acre, 2 acres and 5 acres. EPA had difficulty evaluating the alternative size thresholds because, while directly proportional to the size of the disturbed site, the water quality threat posed by discharges from construction sites of differing sizes varies nationwide, depending on the local climatological, geological, geographical, and hydrological influences. In order to ensure improvements in water quality nationwide, however, today's rule does not allow various permitting authorities to establish different size thresholds except based on the waiver and designation provisions of the rule. EPA believes that the water quality impact from small construction sites is as high as or higher than the impact from larger sites on a per acre basis. By selecting the 1 acre size threshold and coupling it with waivers and additional designations, EPA is seeking to standardize improvement of water quality on a national basis while providing permitting authorities with the opportunity to designate those unregulated activities causing water quality impairments regardless of site size, as well as to waive requirements when information demonstrates that regulation is unnecessary.

EPA recognizes that the size criterion alone may not be the most ideal predictor of the need for regulation, but effective protection of water quality depends as much on simplicity in implementation as it does on the scientific information underlying the regulatory criteria. The default size criterion of 1 acre will ensure protection against adverse water quality impacts from storm water from small construction sites while not overburdening the resources of permitting authorities and the

construction industry to implement the program to protect water quality in the first place.

One commenter stated a need to clarify whether routine road maintenance is considered construction activity for the purpose of today's rule. The NPDES general permit for discharges from construction sites larger than 5 acres defined "commencement of construction" as the *initial* disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (63 FR 7913). For construction sites disturbing less than 5 acres, EPA does not consider construction activity to include *routine* maintenance performed to maintain the *original* line and grade, hydraulic capacity, or original purpose of the facility.

Two commenters believed that the Multi-Sector General Permit for storm water discharges from industrial activities (MSGP) (60 FR 50804) already applies to storm water discharges from construction activities at oil and gas exploration and production sites and asked for a clarification on this issue. Commenters also requested a single general permit to authorize both industrial storm water discharges and construction site discharges which occur at the same industrial site.

Currently, when construction activity disturbing more than 5 acres occurs on an industrial site covered by the MSGP, authorization under a separate NPDES construction permit is needed because the MSGP does not include the "construction" industrial sector. While the MSGP does address sediment and erosion control, it is not as specific as the NPDES general permit for storm water discharges from construction activities disturbing more than 5 acres. Though permitting authorities could conceivably develop a single general permit to authorize storm water discharges associated with construction activity at these industrial facilities, the commenter's request is not addressed by today's rulemaking. When today's rule is implemented through general permits (to be issued later), the permitting authority will have discretion whether or not to incorporate the permit requirements for both the industrial storm water discharges and construction site storm water discharges into a single general permit. This type of request should be addressed to the permitting authority.

One commenter suggested that discharges from small construction sites should be regulated through a "self-implementing rule" approach. While today's rule is not a self-implementing rule, it does add § 122.28(b)(2)(v), which

gives the permitting authority the discretion to authorize a construction general permit for sites less than 5 acres without submitting a notice of intent. Such non-registration general permits function similarly to self-implementing rules, but are, in fact, permits. Today's rule will be implemented through NPDES permits rather than self-implementing regulations to capitalize on the compliance, tracking, enforcement, and public participation associated with NPDES permits (see discussion in section II.C).

Other commenters believed that only the permitting authority should regulate construction site storm water discharges (under a NPDES permit) and that a small MS4 operator's regulation of storm water discharges associated with construction (under the small MS4 NPDES storm water program) is redundant. EPA disagrees that control measure implementation by the NPDES authority and the small MS4 operator is redundant. To the extent the two efforts overlap, today's rule provides for consolidation and coordination of substantive requirements via incorporation by reference permitting. Small MS4s operators may choose to impose more prescriptive requirements than an NPDES permitting authority based on localized water quality needs. In those cases, EPA intends that the substantive requirements from the small MS4 program should apply as the NPDES permit requirements for the construction site discharger. In cases where a small MS4 program does not prioritize and focus on storm water from construction sites (beyond the small MS4 minimum control measure in today's rule, which does not require the small MS4 operator to control construction site discharges in a manner as prescriptive as is expected for discharges regulated under NPDES permits), the Agency intends that the NPDES general permit will provide the substantive standards applicable to the construction site discharge. EPA does anticipate, however, that implementation of MS4 programs to address construction site runoff within their jurisdiction will enhance overall NPDES compliance by construction site dischargers. EPA also notes that under § 122.35(b), the permitting authority may recognize its own program to control storm water discharges from construction sites in lieu of requiring such a program in an MS4's NPDES permit, provided that the permitting authority's program satisfies the requirements of § 122.34(b)(4), including, for example, procedures for site plan reviews and consideration of

information submitted by the public on individual construction sites in each jurisdiction required to be covered by the program.

#### b. Waivers

Under § 122.26(b)(15)(i) of today's rule, NPDES permitting authorities may waive today's requirement for construction site operators to obtain a permit in two circumstances. The first waiver is intended to apply where little or no rainfall is expected during the period of construction. The second waiver may be granted when a TMDL or equivalent analysis indicates that controls on construction site discharges are not needed to protect water quality.

The first waiver is based on "low predicted rainfall erosivity" which can be found using tables of rainfall-runoff erosivity (R) values published for each region in the U.S. R factors are published in the U.S. Department of Agriculture (USDA) *Agricultural Handbook 703* (Renard, K.G., Foster, G.R., Weesies, G.A., McCool, D.K., and D.C. Yoder. 1997. *Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE)*). U.S. Department of Agriculture Handbook 703). The R factor varies based on the time during the year when construction activity occurs, where in the country it occurs, and how long the construction activity lasts. The permitting authority may determine, using Handbook 703, which times of year, if any, the waiver opportunity is available for construction activity. EPA will provide assistance either through computer programs or the World Wide Web on how to determine whether this waiver applies for a particular geographic area and time period. Application of this waiver for regulatory purposes will be determined by the authorized NPDES authority. This waiver is discussed further in the following section titled Rainfall-Erosivity Waiver.

The second waiver is based on a consideration of ambient water quality. This waiver is available after a State or EPA develops and implements TMDLs for the pollutant(s) of concern from storm water discharges associated with construction activity. This waiver is also available for sites discharging to non-impaired waters that do not require TMDLs, when an equivalent analysis has determined allocations for small construction sites for the pollutant(s) of concern or determined that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant

contributions from all sources, and a margin of safety. The Agency envisions an equivalent analysis that would demonstrate that water quality is *not* threatened by storm water discharges from small construction activity. This waiver is discussed further below in the sections titled TMDL Waiver and Water Quality Issues.

The proposed rule included a waiver based on "low predicted soil loss." This waiver provision would have been applicable on a case-by-case basis where the annual soil loss rate for the period of construction for a site, using the Revised Universal Soil Loss Equation (RUSLE), would be less than 2 tons/acre/year. The annual soil loss rate of less than 2 tons/acre/year would be calculated through the use of the RUSLE equation, assuming the constants of no ground cover and no runoff controls in place.

Several commenters found the low soil loss waiver too complex and impractical, and stated that expertise is not available at the local level to prepare and evaluate eligibility for the waiver. Another commenter questioned whether two tons/acre/year was an appropriate threshold for predicting adverse water quality impacts. Two other commenters said that RUSLE was never intended to predict off-site impacts and is not an indicator of potential harm to water quality. EPA agrees with the commenters on the difficulty associated with determining and implementing this waiver. Most construction site operators are not familiar with the RUSLE program, and the potential burden on the permitting authority, construction industry, USDA's Natural Resources Conservation Service and conservation districts probably would have been significant. The Agency has not included this waiver in the final rule.

Two commenters asked that EPA allow States the flexibility to develop their own waiver criteria but did not suggest how the Agency (or affected stakeholders) could evaluate the acceptability of alternative State waiver criteria. Therefore, the final rule does not provide for any such alternative waivers. If a State does seek to develop alternate waiver criteria, then EPA procedures afford the opportunity for subsequent actions, for example, under the Project XL Program in EPA's Office of Reinvention, which seeks cleaner, smarter, and cheaper solutions to environmental problems. Many commenters suggested that EPA extend these waivers to existing industrial storm water regulations for construction activity greater than 5 acres. These construction site discharges are

regulated as industrial storm water discharges under CWA 402(p)(2) and are not eligible for such water quality-based waivers.

Two commenters were concerned that waivers would create a potential for significant degradation of small streams. EPA disagrees. If small streams are threatened, the permitting authority would choose not to provide any waivers. In addition, permitting authorities may protect small streams by designating discharges from small construction activity based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the U.S.

Two commenters asked that the waiver options be eliminated. They felt it would create a gross inequity within the construction community if some projects will not be subject to the requirements of today's rule. While the comments may be valid, EPA disagrees that waivers should be disallowed on this basis. Construction site discharges that qualify for a waiver from permitting requirements are not expected to present a threat to water quality, which is the basis for designation and regulation under today's rule.

A number of commenters suggested additional waivers in cases where new development will result in no additional adverse impacts to water quality as compared to the existing development it replaces. EPA believes these waivers are either unworkable or unnecessary. It would be very difficult for most construction operators to determine, as well as for other stakeholders to verify, on a site-by-site basis, that there is no potential for adverse impact to water quality compared to the replaced development.

Other commenters proposed waivers in cases where a local erosion and sediment control program covers the project or a separate waiver for small linear utility projects. Instead of waivers, today's rule addresses the first suggestion through the qualifying program provision described in the section titled Cross-Referencing State/Local Erosion and Sediment Control Programs below. Today's rule provides waivers for small linear projects in so far as they satisfy conditions for low rainfall erosivity. (See § 122.26(b)(15)(i)(A).)

Other commenters suggested waivers based on distance to water body, existence of vegetated buffer around water body, slope of disturbed land, or if discharging to very large bodies of water. As a result of public outreach, EPA believes that these proposed waivers would be generally unworkable

for construction site dischargers and permitting authorities because of the difficulty in applying them to all small sites.

One commenter mentioned that waivers for the R factor (rainfall-erosivity) and soil loss are effluent standards that have not been developed in accordance with sections 301 and 304 of the CWA. EPA disagrees that these sections are relevant to the designation of sources in today's rule. The waiver provisions in this section of the rule are jurisdictional because they affect the scope of the universe of entities subject to the NPDES program. Therefore, the waiver provisions are not themselves substantive control standards implemented through NPDES permits, and thus, not subject to the statutory criteria in sections 301 and 304.

Another commenter stated that waivers would allow exemptions to the technology based requirements and would thus be inconsistent with the two-fold approach of the CWA (a technology based minimum and a water quality based overlay). EPA acknowledges that the CWA does not generally provide for waivers for the Act's technology-based requirements. The waiver provisions do not create exemptions from technology-based standards that apply to NPDES dischargers; they provide exemption from the underlying requirement for an NPDES permit in the first place. Protection of water quality is the reason these smaller sites are designated for regulation under NPDES. The Act's two fold approach imposes more stringent water quality based effluent limitations when technology-based limitations applicable to regulated dischargers are insufficient to meet water quality standards. Under today's rule, water quality protection is the basis for determining which of the unregulated sources should be regulated at all. Thus, today's rule is entirely consistent with the Act's two fold approach.

*i. Rainfall-Erosivity Waiver.* The rainfall-erosivity waiver under § 122.26(b)(15)(i)(A) is intended to exempt the requirements for a permit when and where negligible rainfall/runoff-erosivity is expected. In the development of the Universal Soil Loss Equation, analysis of data indicated that when factors other than rainfall are held constant, soil loss is directly proportional to a rainfall factor composed of total storm kinetic energy times the maximum 30 minute intensity. The average annual sum of the storm energy and intensity values for an area comprise the R factor—the rainfall erosivity index. A detailed explanation of the R factor can be found in

*Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)* (USDA, 1997).

This waiver is time-sensitive and is dependent on when during the year a construction activity takes place, how long it lasts, and the expected rainfall and intensity during that time. R factors vary based on location. EPA anticipates that this waiver opportunity responds to concerns about the requirement for a permit when it is not expected to rain, especially in the arid areas of the U.S. Under today's rule, the permitting authority could waive the requirements for a permit for time periods when the rainfall-erosivity factor ("R" in RUSLE) is less than five during the period of construction. For the purposes of calculating this waiver, the period of construction activity starts at the time of initial disturbance and ends with the time of final stabilization. The operator must submit a written certification to the Director in order to apply for such a waiver. EPA believes that those areas receiving negligible rainfall during certain times of the year are unlikely to have storm events causing discharges that could adversely impact receiving streams. Consequently, BMPs would not be necessary on those smaller sites. This waiver is most applicable to projects of short duration and to the arid regions of the country where the occurrence of rainfall follows a cyclic pattern—between no rain and extremely heavy rain. EPA review of rainfall records for these areas indicates that, during periods of the year when the number of events and quantity of rain are low, storm water discharges from the smaller construction sites regulated under today's rule should be minimal.

Some commenters supported the use of the R factor as a waiver, while others felt that a waiver based on rainfall statistics ignores the fact that it may rain on any given day and it is the cumulative effect of wet weather discharges which cause water quality impairments. A commenter also asked what happens in "El Nino" years when significantly more rainfall than normal occurs. Another commenter also expressed concern that this waiver was not based on a measured water quality impact, but instead on an indicator of potential impact. In response to the previous comments, EPA notes that, under CWA 402(p)(6), sources are designated on their *potential* for adverse impact. Designation under the section is prospective, not retrospective or remedial only. For that reason, the waivers under today's rule also operate prospectively. EPA wanted to waive requirements for sites with little

potential to impair water quality, and the R factor is the most straightforward way to do this. The permitting authority, if electing to use waivers, could always suspend the use of waivers in certain areas or during certain times. In addition, the permitting authority may choose to use a lower R factor threshold than the one set by EPA. Application of this waiver is at the discretion of the permitting authority, subject only to the limitation that R factors cannot exceed 5.

One commenter expressed the need for EPA to provide a justification for the threshold value used for the R factor. None of the commenters included any data to show that EPA's proposed R factor of 2 was either too high or too low. EPA is using the R factor as an indicator of the potential to impact water quality. In an effort to determine which R threshold should be used, EPA conducted additional analysis of the rainfall/runoff erosivity factor for 134 sites across the country. For an R factor threshold of 5, approximately 12% of sites would be waived if the project period lasted 6 months, 27% for 3 months, 47% for 1 month, and 60% of sites would be waived if the project lasted for only 15 days. None of the 134 sites would be waived if the project lasted an entire year. For an R factor threshold of 2, approximately 9% of sites would be waived if the project period lasted 6 months, 15% for 3 months, 31% for 1 month, and 43% for 15 days. For an R factor threshold of 10, approximately 22% of sites would be waived if the project period lasted 6 months, 37% for 3 months, 60% for 1 month, and 78% for 15 days. EPA believes that an R factor of 5 is an adequate threshold to waive requirements for sites because they would not reasonably be expected to impair water quality.

EPA will develop, as part of the tool box described in section II.A.5, guidance materials and computer or web-accessible programs to assist permitting authorities and construction site discharges in determining if any resulting storm water discharges from specific projects are eligible for this waiver.

*ii. Water Quality Waiver.* The water quality waiver under § 122.26(b)(15)(i)(B) is available where storm water controls are not needed based on a comprehensive, location-specific evaluation of water quality needs. The waiver is available based on either an EPA-approved "total maximum daily load" (TMDL) under section 303(d) of the CWA that addresses the pollutant(s) of concern or, for sites discharging to non-impaired

waters that do not require TMDLs, an equivalent analysis that has either determined allocations for small construction sites for the pollutant(s) of concern or determined that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The pollutants of concern that must be addressed include sediment or a parameter that addresses sediment (such as total suspended solids (TSS), turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the NPDES permitting authority that the construction activity will take place, and storm water discharges will occur, within the applicable drainage area evaluated in the TMDLs or equivalent analyses.

Today's rule modifies the approach in the proposed rule. EPA proposed to allow a waiver of permit requirements for small construction if storm water controls were determined to be unnecessary based on "wasteload allocations that are part of 'total maximum daily loads' (TMDLs) that address the pollutants of concern," or "a comprehensive watershed plan, implemented for the water body, that includes the equivalents of TMDLs, and addresses the pollutants of concern."

Commenters asked for clarification of the terms "comprehensive watershed plans" and "equivalent of TMDLs." EPA intended that both terms would include a comprehensive analysis that determines that controls on small construction sites are not needed based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. Today's rule makes this clarification.

One commenter pointed out that there are no water quality standards for suspended solids, the major pollutant expected in discharges from construction activity. The commenter asserted that no waiver would ever be available. Another commenter noted that there are no sediment criteria developed for streams, also making this waiver useless. EPA notes that a number of States and Tribes have water quality standards that address TSS, which are narrative in form, and that may serve as a basis for water quality-based effluent limits. As efforts to identify impairments and improve water quality progress, some States may yet develop water quality standards for suspended

solids. Although several TMDLs for sediment and related parameters have been established, EPA does recognize that currently it is extremely difficult to develop TMDLs for sediment. EPA is partially addressing this concern by clarifying in today's rule that the waivers may be based on a TMDL or equivalent analyses for sediment or one of the various pollutant parameters that are a proxy for sediment. These include TSS, turbidity and siltation.

Other commenters noted that this waiver was unattainable if a TMDL or equivalent analysis must be available for every pollutant that could possibly be present in any amount in discharges from small construction sites regardless of whether the pollutant is causing water quality impairment. Commenters asked that EPA identify what constitutes the "pollutants of concern" for which a TMDL or its equivalent must be developed. EPA has revised the proposed rule in response to these concerns.

In order for discharges from construction sites under five acres to qualify for the water quality waiver of today's rule, the construction site operator must demonstrate that storm water controls are not necessary for sediment or a parameter that addresses sediment (such as TSS, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. Even if the water body is not currently impaired for sediment, today's rule requires an analysis of the potential impacts of sediment because the storm water discharges from the construction activity will be a new source of loading to the water body that could constitute a new impairment. Because the water body will not necessarily have been included on a "303(d) list" and a TMDL will not necessarily be required, the rule continues to allow an analysis that is the equivalent of a TMDL. The designation of storm water discharges from small construction activity for regulation in today's rule is intended to control pollutants other than sediment. This waiver provision requires a TMDL or equivalent analysis for a pollutant other than gross particulates (*i.e.*, sediment and other particulate-focused pollutant parameters) only if the receiving water is currently impaired for that pollutant.

One commenter expressed the concern that construction operators will not know if they are in a watershed covered by a TMDL. To the extent this is an operator's concern, he or she could contact their NPDES permitting

authority before applying for permit coverage to determine if receiving water is subject to a TMDL. Alternatively, the permitting authority could identify the TMDL (or equivalent analysis) areas in the general permit or another operator-accessible information source.

Another commenter expressed the concern that a TMDL waiver is likely to be ineffective because the TMDL list is submitted only once every 2 years. By the time a water is listed, the activity may have been completed and stabilized. The commenter argued that, if a watershed is impaired due to sediment from construction, then storm water controls will still be needed, because small construction can only be waived when it is not identified as a source of impairment. In response, EPA notes that an analysis that is the equivalent of a TMDL (specifically, equivalent to the component of a TMDL that comprehensively analyses existing ambient conditions against the applicable water quality standards) may also provide a basis for waiver from the default 1 acre designation. Also, even if a water has been identified as impaired for sediment, it is possible that a site or category of sites may receive an allocation that is sufficiently high enough to allow discharges without storm water controls.

#### c. Permit Process and Administration

The operator of the construction site, as with any operator of a point source discharge, is responsible for obtaining coverage under a NPDES permit as required by § 122.21(b). The "operator" of the construction site, as explained in the current NPDES construction general permit, is typically the party or parties that either individually or collectively meet the following two criteria: (1) Operational control over the site specifications, including the ability to make modifications in the specifications; and (2) day-to-day operational control of those activities at the site necessary to ensure compliance with permit conditions (63 FR 7859). If more than one party meets these criteria, then each party involved would typically be a co-permittee with any other operators. The operator could be the owner, the developer, the general contractor, or individual contractor. When responsibility for operational control is shared, all operators must apply.

In today's rule, EPA is not requiring an NOI for NPDES general permits for storm water discharges from construction activities regulated by § 122.26(b)(15) if the NPDES permitting authority finds that the use of NOIs would be inappropriate (see

§ 122.28(b)(2)(v)). Under this approach, the NPDES permitting authority will have the discretion to decide whether or not to require NOIs for discharges from construction activity less than 5 acres. Compared to the existing storm water regulation, the permitting authority thus has increased flexibility in program implementation. EPA does recommend the use of NOIs, however because NOIs track permit coverage and provide a useful information source to prioritize inspections or enforcement. Requiring an NOI allows for greater accountability by, and tracking of, dischargers. This simple permit application and reporting mechanism also allows for better outreach to the regulated community, uses an existing and familiar mechanism, and is consistent with the existing requirements for storm water discharges from larger construction activities. Today's rule does not amend the requirement for NOIs in general permits for storm water discharges from construction activity disturbing 5 acres or more. See § 122.28(b)(2)(v).

EPA expects that the vast majority of discharges of storm water associated with small construction activity identified in § 122.26(b)(15) will be regulated through general permits. In the event that an NPDES permitting authority decides to issue an individual construction permit, however, individual application requirements for these construction site discharges are found at § 122.26(c)(1)(ii). For any discharges of storm water associated with small construction activity identified in § 122.26(b)(15) that are not authorized by a general permit, a permit application made pursuant to § 122.26(c) must be submitted to the Director by 3 years and 90 days after publication of the final rule.

Some commenters expressed concern that linear construction projects (*e.g.*, roads, highways, pipelines) that cross several jurisdictions will have to comply with multiple sets of requirements from various jurisdictions, including multiple local governments and States. EPA is limited in its options to address these concerns because the Agency cannot issue NPDES permits in States authorized to implement the NPDES program nor preempt other more stringent local and State requirements. EPA believes, however, that the option for incorporating by reference the State, Tribal or local requirements (see discussion in Section II.I.2.d., Cross-Referencing State/Local Erosion and Sediment Control Programs) should limit the administrative burden on the operator responsible for discharges from linear construction projects. If the operator were to implement the most

comprehensive of the various requirements for the whole project, it could avoid confusion due to differing requirements for different sections of the project. In addition, linear utility projects, which usually have a shorter project period, are more likely to be eligible for the rainfall erosivity waiver.

One commenter stated there was no reason to delay the application period for regulated storm water discharges from small construction activities. The commenter requested that the newly regulated construction site discharges should be required to seek permit coverage within 90 days, as opposed to 3 years, of the effective date of the rule. The Agency does not accept this request. EPA anticipates that NPDES permitting authorities will need one to two years to develop adequate legal authority to implement a program to address this new category of discharges, as well as to develop and issue general permits. Moreover, to ensure effective implementation to protect water quality, regulatory authorities will need additional time to inform small construction site operators of requirements and provide guidance and training on these requirements.

Finally, EPA received a comment requesting that the three year file retention requirement be deleted for discharges from small construction sites. While EPA recognizes that the three year record retention schedule may be unnecessary for certain construction projects, the Agency has determined it is necessary to retain files after the completion of the project to ensure permit compliance, including applicable construction site stabilization enabling permit termination for such sites.

#### d. Cross-Referencing State, Tribal or Local Erosion and Sediment Control Programs

In developing the NPDES permit requirements for construction sites less than 5 acres, members of the Storm Water Phase II FACA Subcommittee asked EPA to try to minimize redundancy in the construction permit requirements. In response, today's rule at § 122.44(s) provides for incorporation of qualifying State, Tribal or local erosion and sediment control program requirements by reference into the NPDES permit authorizing storm water discharges from construction sites (described under §§ 122.26(b)(15) and (b)(14)(x)). The incorporation by reference approach applies not only to the newly regulated storm water discharges (from construction activity disturbing between 1 and 5 acres, including designated sites, but

excluding waived sites) but also to discharges from construction activity disturbing 5 or more acres already covered by the existing storm water regulations. For this latter category of discharges from construction activity disturbing 5 or more acres, the incorporation by reference approach requires that the pollutant control requirements from the incorporated program also satisfy the statutory standard for limitations representing application of the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT).

For permits issued for discharges from small construction activity defined under § 122.26(b)(15), a qualifying State, Tribal, or local erosion and sediment control program is one that includes the program elements described under § 122.44(s)(1). These elements include requirements for construction site operators to implement appropriate erosion and sediment control BMPs, requirements to control waste, a requirement to develop a storm water pollution prevention plan, and requirements to submit a site plan for review. A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges. The construction site's permit would require it to follow the requirements of the qualifying local program rather than require it to follow two different sets of requirements. If a partially-qualifying program does not have all of the elements described under § 122.44(s)(1), then the NPDES permitting authority may still incorporate language in the small construction site discharge's permit that requires the construction site operator to follow the program, but the construction site discharge permit also must incorporate the missing required elements in order to satisfy CWA requirements.

The term "local" refers to the geographic area of applicability, not the form of government that develops and administers the program. Thus, a qualifying federal erosion and control program, such as certain programs developed and administered by the federal Bureau of Land Management, could be a qualifying local program.

As a result of this provision, local requirements will, in effect, provide the substantive construction site erosion and sediment control requirements for the NPDES permit authorization. Therefore, by following one set of

erosion and sediment control requirements, construction site operators satisfy both local and NPDES permit requirements without duplicative effort. At the same time, noncompliance with the referenced local requirements will be considered noncompliance with the NPDES permit which is federally enforceable. The NPDES permitting authority will, of course, retain the discretion to decide whether to include the alternative requirements in the general permit. EPA believes that this approach will best balance the need for consideration of specific local requirements and local implementation with the need for federal and citizen oversight, and will extend supplemental NPDES requirements to control storm water discharges from construction sites.

EPA developed the "incorporation by reference" approach based on implementation efforts designed by the State of Michigan. Michigan relies on localities to develop substantive controls for storm water discharges associated with construction activities on a localized basis. Localities, however, are not required to do so. In areas where the local authority does not choose to participate, the State administers the sedimentation and erosion control requirements. The State agency, as the NPDES permitting authority, receives an NOI (termed "notice of coverage" by Michigan) under the general permit and tracks and exercises oversight, as appropriate, over the activity causing the storm water discharge. Michigan's goal under these procedures is to utilize the existing erosion and sediment control program infrastructure authorized under State law for storm water discharge regulation. (See U.S. Environmental Protection Agency, Office of Water, January 7, 1994, Memo: From Michael B. Cook, Director OWEC, to Water Management Division Directors, Regarding the "Approach Taken by Michigan to Regulate Storm Water Discharges from Construction Activities.")

Most commenters supported the general concept of incorporating by reference qualifying programs. Two commenters expressed concern that different local construction requirements will create an impossible regulatory scheme for builders who work in different localities. EPA believes that allowing States to incorporate qualifying programs by reference will minimize the differences for builders who work in different areas of the State. These differences already exist, however, not only for erosion and sediment controls, but also other aspects

of construction. In any event, the criteria for qualification for localized programs should provide a certain degree of standardization for various localities' requirements. EPA expects that the new rule for construction and post-construction BMPs being developed under CWA section 304(m) will also encourage standardization of local requirements. (See discussion of this new rulemaking in section II.D.1, Federal Role of this preamble).

Two commenters requested that an "incorporation by reference" should include permission, in writing, from the qualifying local program administrator because of a perceived extra burden on the referenced program. Any program requirements incorporated by reference in NPDES permits should already apply to construction site dischargers in the applicable area and therefore should not add any additional burden to the referenced program. EPA has left to the discretion of the permitting authority the decision on whether to seek permission from the qualifying program before cross-referencing it in an NPDES permit.

One commenter stated that a qualifying local program should require a SWPPP. The proposed rule defined the qualifying local program as a program that meets the minimum program requirements established in the proposed construction minimum control measure for small MS4s. To ensure consistency in the controls for storm water discharges between the larger, already regulated construction sites and the discharges from smaller sites that will be regulated as a result of today's rule, EPA has made a change to define a qualifying local program as one that includes the elements described in § 122.44(s)(1). Section 122.44(s)(1) requires the development and implementation of a storm water pollution prevention plan as a criterion for qualification of local programs for incorporation by reference. As noted above, if a qualifying program does not include all the elements in § 122.44(s)(1) then the permitting authority will need to specify the missing elements in order to rely on the incorporation by reference approach.

One commenter asked what happens in regard to the use of qualifying programs when a construction site operator is also the qualifying local program operator. The provision for incorporation by reference applies in this situation also. The local program operator will be required to comply with requirements it has established for others.



#### e. Alternative Approaches

EPA received a number of comments on alternative permitting approaches. Several commenters supported regulating discharges only from those construction sites within urbanized areas. Other commenters opposed this approach. EPA chose to address storm water discharges from construction sites located both within and outside urbanized areas because of the potential for adverse water quality impact from storm water discharges from smaller sites in all areas. Regulating only those sites within urbanized areas would have excluded a large number of potential contributors to water quality impairment and would not address large areas of new development occurring on the outer fringes of urbanized areas. In fact, designating only small construction discharges within urbanized areas might create a perverse incentive for building only outside urbanized areas. Such an incentive would be inconsistent with the Agency's intention behind designating to protect water quality. The Agency intends that designation to protect water quality in today's rule should be both remedial and preventive.

A number of commenters encouraged EPA to cover municipal construction activities under the small MS4 general permit, instead of issuing a separate NPDES construction permit to these municipal construction projects. Similarly, a number of commenters supported EPA giving industrial facilities the option of having storm water from construction activities on the site covered by the industrial storm water permit. Several other commenters found that combining multiple permit types under one general permit introduced a degree of complexity which was confusing to permittees. Permitting authorities have the option of combining MS4 and construction permits or industrial and construction permits, however, specific requirements for each would still need to be included in the permit issued. EPA agrees that this would probably result in a more complex and confusing permit compared to the existing component permits.

Several commenters supported an alternative for regulated small MS4s where a local qualified program alone, without an NPDES permit, is sufficient to enforce compliance with construction site discharge requirements. On the other hand, one commenter stated that linking the local construction erosion and sediment control program to the existing NPDES program for storm water from larger construction has driven improvements in many local programs.

Another commenter stated that the potential fines under the NPDES program will encourage compliance and will be much stronger than any fines a local program may have. EPA agrees that the NPDES program is the best approach to address water quality impacts from construction sites and provides benefits such as accountability and federal enforcement.

A number of commenters supported issuing one permit for each construction company, instead of a permit for each individual construction activity (also requested for storm water discharges from the larger, already regulated construction sites). Other commenters found that a 'licensing' program for construction site operators would have many problems, including identifying who to permit and tracking information on active sites. EPA is regulating only the storm water discharges associated with construction activity from small sites, not the construction activity itself. Separate NPDES permits (either individual or general permit coverage) for construction site discharges avoid potential problems in tracking sites and operator accountability. Section 122.28(b)(2)(v) gives permitting authorities the option to issue a general permit without requiring an NOI. If an NOI is not required for each activity, permitting authorities could pursue other options such as a company-wide NOI, license instead of an NOI, or another mechanism.

#### 2. Other Sources

In the *Storm Water Discharges Potentially Addressed by Phase II of the National Pollutant Discharge Elimination System Storm Water Program*, Report to Congress, March 1995, ("Report") submitted by EPA pursuant to CWA section 402(p)(5), EPA examined the remaining unregulated point sources of storm water for the potential to adversely affect water quality. Due to very limited national data on which to estimate pollutant loadings on the basis of discharge categories, the discussion of the extent of unregulated storm water discharges is limited to an analysis of the number and geographic distribution of the unregulated storm water discharges. Therefore, EPA is not designating any additional unregulated point sources of storm water on a nationwide, categorical basis. Instead, the remainder of the sources will be regulated based on case-by-case post-promulgation designations by the NPDES permitting authority.

EPA did, however, evaluate a variety of categories of discharges for potential designation in the Report. EPA's efforts to identify sources and categories of

unregulated storm water discharges for potential designation for regulation in today's rule started with an examination of approximately 7.7 million commercial, retail, industrial, and institutional facilities identified as "unregulated." In general, the distribution of these facilities follows the distribution of population, with a large percentage of facilities concentrated within urbanized areas (see page 4-35 of the Report). This examination resulted in identification of two general classes of facilities with the potential for discharging pollutants to waters of the United States through storm water point sources.

The first group (Group A) included sources that are very similar, or identical, to regulated "storm water discharges associated with industrial activity" but that were not included in the existing storm water regulations because EPA used SIC codes in defining the universe of regulated industrial activities. By relying on SIC codes, a classification system created to identify industries rather than environmental impacts from these industries discharges, some types of storm water discharges that might otherwise be considered "industrial" were not included in the existing NPDES storm water program. The second general class of facilities (Group B) was identified on the basis of potential for activities and pollutants that could contribute to storm water contamination.

EPA estimates that Group A has approximately 100,000 facilities. Discharges from facilities in this group, which may be of high priority due to their similarity to regulated storm water discharges from industrial facilities, include, for example, auxiliary facilities or secondary activities (e.g., maintenance of construction equipment and vehicles, local trucking for an unregulated facility such as a grocery store) and facilities intentionally omitted from existing storm water regulations (e.g., publicly owned treatment works with a design flow of less than 1 million gallons per day, landfills that have not received industrial waste).

Group B consists of nearly one million facilities. EPA organized Group B sources into 18 sectors for the purposes of the Report. The automobile service sector (e.g., gas/service stations, general automobile repair, new and used car dealerships, car and truck rental) makes up more than one-third of the total number of facilities identified in all 18 sectors.

EPA conducted a geographical analysis of the industrial and commercial facilities in Groups A and

B. The geographical analysis shows that the majority are located in urbanized areas (see Section 4.2.2, Geographic Extent of Facilities, in the Report). In general, about 61 percent of Group A facilities and 56 percent of Group B facilities are located in urbanized areas. The analysis also showed that nearly twice as many industrial facilities are found in all urbanized areas as are found in large and medium municipalities alone. Notable exceptions to this generalization included lawn/garden establishments, small unregulated animal feedlots, wholesale livestock, farm and garden machinery repair, bulk petroleum wholesale, farm supplies, lumber and building materials, agricultural chemical dealers, and petroleum pipelines, which can frequently be located in smaller municipalities or rural areas.

In identifying potential categories of sources for designation in today's notice, EPA considered designation of discharges from Group A and Group B facilities. EPA applied three criteria to each potential category in both groups to determine the need for designation: (1) The likelihood for exposure of pollutant sources included in that category, (2) whether such sources were adequately addressed by other environmental programs, and (3) whether sufficient data were available at this time on which to make a determination of potential adverse water quality impacts for the category of sources. As discussed previously, EPA searched for applicable nationwide data on the water quality impacts of such categories of facilities.

By application of the first criterion, the likelihood for exposure, EPA considered the nature of potential pollutant sources in exposed portions of such sites. As precipitation contacts industrial materials or activities, the resultant runoff is likely to mobilize and become contaminated by pollutants. As the size of these exposed areas increases, EPA expects a proportional increase in the pollutant loadings leaving the site. If EPA concluded that a category of sources has a high potential for exposure of raw materials, intermediate products, final products, waste materials, byproducts, industrial machinery, or industrial activity to rainfall, the Agency rated that category of sources as having "high" potential for adverse water quality impact. EPA's application of the first criterion showed that a number of Group A and B sources have a high likelihood of exposure of pollutants.

Through application of the second criterion, EPA assessed the likelihood

that pollutant sources are regulated in a comprehensive fashion under other environmental protection programs, such as programs under the Resource Conservation and Recovery Act (RCRA) or the Occupational Health and Safety Act (OSHA). If EPA concluded that the category of sources was sufficiently addressed under another program, the Agency rated that source category as having "low" potential for adverse water quality impact. Application of the second criterion showed that some categories were likely to be adequately addressed by other programs.

After application of the third criterion, availability of nationwide data on the various storm water discharge categories, EPA concluded that available data would not support any such nationwide designations. While such data could exist on a regional or local basis, EPA believes that permitting authorities should have flexibility to regulate only those categories of sources contributing to localized water quality impairments.

EPA received comments requesting designation of additional industrial, commercial and retail sources (*e.g.* industrial activity "look-alikes", roads, commercial facilities and institutions, and vehicle maintenance facilities) in the final rule, because the commenters believe that the data exist to support national designation of some of these sources. Other comments were received opposing designation of any additional sources. Today's rule does not designate any additional industrial or commercial category of sources either because EPA currently lacks information indicating a consistent potential for adverse water quality impact or because of EPA's belief that the likelihood of adverse impacts on water quality is low, with some possible exceptions on a more local basis. Since the time the Agency submitted the Report, EPA has continued to seek additional data and has requested available data from the FACA members. If sufficient regional or nationwide data become available in the future, the permitting authority could at that time designate a category of sources or individual sources on a case-by-case basis. Therefore, today's rule encourages control of storm water discharges from Groups A and B through self-initiated, voluntary BMPs, unless the discharge (or category of discharges) is designated for permitting by the permitting authority. See discussion in section I.D., EPA's Reports to Congress.

### 3. ISTEA Sources

Provisions within the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991 temporarily

exempted storm water discharges associated with industrial activity that are owned or operated by municipalities serving populations less than 100,000 people (except for airports, power plants, and uncontrolled sanitary landfills) from the need to apply for or obtain a storm water discharge permit (section 1068(c) of ISTEA). Congress extended the NPDES permitting moratorium for these facilities to allow small municipalities additional time to comply with NPDES requirements for certain sources of industrial storm water. The August 7, 1995 storm water final rule (60 FR 40230) further extended this moratorium until August 7, 2001. However, today's rule changes this deadline so that previously exempted industrial facilities owned or operated by municipalities serving populations less than 100,000 people, must now submit an application for a permit within 3 years and 90 days from date of publication of today's rule.

EPA received comments recommending that permit requirements for municipally owned or operated industrial storm water discharges, including those previously exempt under ISTEA, be included in a single NPDES permit for all MS4 storm water discharges. The existing NPDES regulations already provide permitting authorities the ability to issue a single "combination" permit for MS4 discharges. However, if the permitting authorities chose to issue this type of permit, they must make sure that in doing so, they are not creating a double standard for industrial facilities covered under the combination permit versus those covered under separate general or individual permits. In order to avoid this double standard, combination permits would have to contain requirements that are the same or very similar to the requirements found in separate MS4 and industrial permits, *i.e.*, the minimum measures and other necessary requirements of an MS4 permit, and the SWPPP, monitoring and reporting requirements, and other necessary requirements of an industrial permit. If such a combined MS4 general permit were issued, the regulations require that each discharger submit NOIs for their respective discharges, except for discharges from small construction activities. Flexibility exists in developing a combination NOI which could reduce the need to submit duplicative information, *e.g.* owner/operator name and address. The combination NOI would still need to require specific information for each separate municipally owned or operated industrial location, including

construction projects disturbing 5 or more acres. The regulations at § 122.28(b)(2)(ii) list the necessary contents of an NOI, which require: the facility name, facility address, type of facility or discharge and receiving stream for each industrial discharge location. When viewed in its entirety, a combination permit, which by necessity would need to contain all elements of otherwise separate industrial and MS4 permit requirements, and require NOI information for each separate industrial activity, may have few advantages when compared to obtaining separate MS4 and industrial general permit coverage.

In order to allow the permitting authority to issue a single storm water permit for the MS4 and all municipally owned or operated industrial facilities, including those previously exempt under ISTEA, today's rule requires applications for ISTEA sources within 3 yrs and 90 days from date of publication of today's rule. The permitting authority has the ultimate decision to determine whether or not a single all-encompassing MS4 permit is appropriate.

#### 4. Residual Designation Authority

The NPDES permitting authority's existing designation authority, as well as the petition provisions are being retained. Today's rule contains two provisions related to designation authority at §§ 122.26(a)(9)(i)(C) and (D). Subsection (C) adds designation authority where storm water controls are needed for the discharge based upon wasteload allocations that are part of TMDLs that address the pollutant(s) of concern. EPA intends that the NPDES permitting authority have discretion in the matter of designations based on TMDLs under subsection (C). Subsection (D) carries forward residual designation authority under former § 122.26(g), and has been modified to provide clarification on categorical designation. Under today's rule, EPA and authorized States continue to exercise the authority to designate remaining unregulated discharges composed entirely of storm water for regulation on a case-by-case basis (including § 123.35). Individual sources are subject to regulation if EPA or the State, as the case may be, determines that the storm water discharge from the source contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This standard is based on the text of section CWA 402(p). In today's rule, EPA believes, as Congress did in drafting section CWA 402(p)(2)(E), that individual instances of storm water discharge might warrant

special regulatory attention, but do not fall neatly into a discrete, predetermined category. Today's rule preserves the regulatory authority to subsequently address a source (or category of sources) of storm water discharges of concern on a localized or regional basis. For example, as States and EPA implement TMDLs, permitting authorities may need to designate some point source discharges of storm water on a categorical basis either locally or regionally in order to assure progress toward compliance with water quality standards in the watershed.

EPA received comments asking that § 122.26(a)(9)(i)(D) as proposed be modified to include specific language clarifying the permitting authority's ability to designate additional sources on a categorical basis as explained in the preamble to the proposed rule. One comment requested that the designation language include "categories of sources on a Statewide basis." EPA agrees that the intent of the language may not have been clear regarding categorical designation. Today's rule modifies subsection (D) to clarify that the designation authority can be applied within different geographic areas to any single discharge (i.e., a specific facility), or category of discharges that are contributing to a violation of a water quality standard or are significant contributors of pollutants to waters of the United States. The added term "within a geographic area" allows "State-wide" or "watershed-wide" designation within the meaning of the terms.

One commenter questioned the Agency's legal authority to provide for such residual designation authority. The stakeholder argued that the lapse of the October 1, 1994, permitting moratorium under CWA section 402(p)(1) eliminated the significance of the CWA section 402(p)(2) exceptions to the moratorium, including the exception for discharges of storm water determined to be contributing to a violation of a water quality standard or a significant contributor of pollutants under CWA section 402(p)(2)(E). The stakeholder further argued that EPA's authority to designate sources for regulation under CWA section 402(p)(6) is limited to storm water discharges other than those described under CWA section 402(p)(2). Because CWA section 402(p)(2)(E) describes individually designated discharges, the stakeholder concluded that regulations under CWA section 402(p)(6) cannot provide for post-promulgation designation of individual sources. EPA disagrees.

First, as explained previously, EPA anticipates that NPDES permitting

authorities may yet determine that individual unregulated point sources of storm water discharges require regulation on a case-by-case basis. This conclusion is consistent with the Congress' recognition of the potential need for such designation under the first phase of storm water regulation as described in CWA section 402(p)(2)(E). Under CWA section 402(p)(2)(E), Congress recognized the need for both EPA and the State to retain authority to regulate unregulated point sources of storm water under the NPDES permit program. Second, to the extent that CWA section 402(p)(6) requires designation of a "category" of sources, the permitting authority may designate such (as yet unidentified) sources as a category that should be regulated to protect water quality. Though such sources may exist and discharge today, if neither EPA nor the State/Tribal NPDES permitting authority has designated the source for regulation under CWA section 402(p)(2)(E) to date, then CWA section 402(p)(6) provides the authority to designate such sources.

The Agency can designate a category of "not yet identified" sources to be regulated, based on local concerns, even if data do not exist to support nationwide regulation of such sources. EPA does not interpret the language in CWA section 402(p) to preclude States from exercising designation authority under these provisions because such designation (and subsequent regulation of designated sources) is within the "scope" of the NPDES program.

EPA also believes that sources regulated pursuant to a State designation are part of (and regulated under) a federally approved State NPDES program, and thus subject to enforcement under CWA sections 309 and 505. Under existing NPDES State program regulations, State programs that are "greater in scope of coverage" are not part of the federally-approved program. By contrast, any such State regulation of sources in this "reserved category" will be within the scope of the federal program because today's rule recognizes the need for such post promulgation designations of unregulated point sources of storm water. Such regulation will be "more stringent" than the federal program rather than "greater in scope of coverage" (40 CFR 123.1(h)).

EPA does not interpret the congressional direction in CWA section 402(p)(6) to preclude regulation of point sources of storm water that should be regulated to protect water quality. Under CWA section 510, Congress expressly recognized and preserved the authority of States to adopt and enforce

more stringent regulation of point sources, as well as any requirement respecting the control or abatement of pollution. Section 510 applies, "except as expressly provided" in the CWA. CWA section 502(14) does expressly provide affirmative limitations on the regulation of certain pollutant sources through the point source control program, the NPDES permitting program. Section 502(14) excludes agricultural storm water and return flows from irrigated agriculture from the definition of point source, and section 402(l) limits applicability of the section 402 permit program for return flows from irrigated agriculture, as well as for storm water runoff from certain oil, gas, and mining operations. Unlike sections 502(14) and 402(l), EPA does not interpret CWA section 402(p)(6) as an express provision limiting the authority to designate point sources of storm water for regulation on a case-by-case basis after the promulgation of final regulations. Any source of storm water discharge is encouraged to assess its potential for storm water contamination and take preventive measures against contamination. Such proactive actions could result in the avoidance of future regulation.

One comment was received requesting clarification of the term "non-municipal" in § 122.26(a)(9)(ii). The commenter is concerned that the term "non-municipal," in this context, implies that municipally owned or operated facilities cannot be designated. The term "non-municipal" in this context refers to the universe of unregulated industrial and commercial facilities that could potentially be designated according to § 122.26(a)(9)(i) authority. There is no exemption for municipally owned or operated facilities under these designation provisions.

Finally, EPA received comments and evaluated the proposal under which operators of regulated small, medium, and large MS4s would be responsible for controlling discharges from industrial and other facilities into their systems in lieu of requiring NPDES permit coverage for such facilities. EPA did not adopt this framework due to concerns with administrative and technical burden on the MS4 operators, as well as concerns about such an intergovernmental mandate.

#### *J. Conditional Exclusion for "No Exposure" of Industrial Activities and Materials to Storm Water*

##### 1. Background

In 1992, the Ninth Circuit court remanded to EPA for further

rulemaking, a portion of the definition of "storm water discharge associated with industrial activity" that excluded the category of industrial activity identified as "light industry" when industrial materials and/or activities were not exposed to storm water. See *NRDC v. EPA*, 966 F.2d 1292, 1305 (9th Cir. 1992). Today's final rule responds to that remand. In the 1990 storm water regulations, EPA excluded the light industry category from the requirement for an NPDES permit if the industrial materials and/or activities were not "exposed" to storm water (see § 122.26(b)(14)). The Agency had reasoned that most of the activity at these types of facilities takes place indoors and that emissions from stacks, use of unboxed manufacturing equipment, outside material storage or disposal, and generation of large amounts of dust or particles would be atypical (55 FR 48008, November 16, 1990).

The Ninth Circuit determined that the exemption was arbitrary and capricious for two reasons. First, the court found that EPA had not established a record to support its assumption that light industry that was not exposed to storm water was not "associated with industrial activity," particularly when other types of industrial activity not exposed to storm water remained "associated with industrial activity." The court specifically found that "[t]o exempt these industries from the normal permitting process based on an unsubstantiated assumption about this group of facilities is arbitrary and capricious." Second, the court concluded that the exemption impermissibly "altered the statutory scheme" for permitting because the exemption relied on the unverified judgment of the light industrial facility operator to determine non-applicability of the permit application requirements. In other words, the court was critical that the operator would determine for itself that there was "no exposure" and then simply not apply for a permit without any further action. Without a basis for ensuring the effective operation of the permitting scheme—either that facilities would self-report actual exposure or that EPA would be required to inspect and monitor such facilities—the court vacated and remanded the rule to EPA for further rulemaking.

One of the major concerns expressed by the FACA Committee, was that EPA streamline and reinvent certain troublesome or problematic aspects of the existing permitting program for storm water discharges. One area identified was the mandatory applicability of the permitting program

to all industrial facilities, even those "light industrial" activities that are of very low risk or of no risk to storm water contamination. Such dischargers may not have any industrial sources of storm water contamination on the plant site, yet they are still required to apply for an NPDES storm water permit and meet all permitting requirements. Examples of such facilities are a soap manufacturing plant (SIC Code 28) or hazardous waste treatment and disposal facility, where all industrial activities, even loading docks, are inside a building or under a roof.

Although they did not provide a written report, the FACA Committee members advised EPA that the existing storm water program should be revised to allow such facilities to seek an exclusion from the NPDES storm water permitting requirements. The Committee agreed that such an exclusion should also provide a strong incentive for other industrial facilities that conduct industrial activities outdoors to move the activities under cover or into buildings to prevent contamination of rainfall and storm water runoff. The committee believed that such a "no exposure" permit exclusion could be a valuable incentive for storm water pollution prevention.

In today's final rule, the Agency responds to both of the bases for the court's remand. The exclusion from permitting based on "no exposure" applies to all industrial categories listed in the existing storm water regulations except construction. The court's opinion rejected EPA's distinction between light industry and other industry, but it did not preclude an interpretation that treats all "non-exposed" industrial facilities in the same fashion. Presuming that an industrial facility adequately prevents exposure of industrial materials and activities to storm water, today's rule treats discharges from "non-exposed" industrial facilities in a manner similar to the way Congress intended for discharges from administrative buildings and parking lots. Specifically, permits will not be required for storm water discharges from these facilities on a categorical basis.

To assure that discharges from industrial facilities really are similar to discharges from administrative buildings and parking lots, and to respond to the second basis for the court's remand, the permitting exclusion is "conditional". The person responsible for a point source discharge from a "no exposure" industrial source must meet the conditions of the exclusion, and complete, sign and submit the certification to the permitting authority for tracking and

accountability purposes. EPA believes today's rule, therefore, is fully consistent with the direction provided by the court.

EPA relied upon the "no exposure" concept discussed by the FACA Committee in developing the "no exposure" provisions of today's rule. EPA is deleting the sentence regarding "no exposure" for the facilities in § 122.26(b)(14)(xi) and adding a new § 122.26(g) titled "Conditional Exclusion for No Exposure of Industrial Activities to Storm Water." The "no exposure" provision will make storm water discharges from all classes of industrial facilities eligible for exclusion, except storm water discharges from regulated construction activities. Regulated construction activities cannot claim "no exposure" because the main pollutants of concern (e.g., sediment) generally cannot entirely be sheltered from storm water.

Today's rule represents a significant expansion in the scope of the "no exposure" provision originally promulgated in the 1990 rule, which was only for storm water discharges from light industry. The intent of today's "no exposure" provision is to provide a simplified method for complying with the CWA to all industrial facilities that are entirely indoors. This includes facilities that are located within a large office building, or at which the only items permanently exposed to precipitation are roofs, parking lots, vegetated areas, and other non-industrial areas or activities.

EPA received several comments related to storm water runoff from parking lots, roof tops, lawns, and other non-industrial areas of an industrial facility. Storm water discharges from these areas, which may contain pollutants or which may result in additional storm water flows, are not directly regulated under the existing storm water permitting program because they are not "storm water discharges associated with industrial activity". Many comments on this issue supported maintaining the exclusion from the existing regulations for storm water permitting for discharges from administrative buildings, parking lots, and other non-industrial areas. Other comments opposed allowing the continued exclusion for discharges from non-industrial areas of the site because discharges from these areas are potentially a significant cause of receiving water impairment. These comments urged that such discharges should not be excluded from NPDES permit coverage. Today's rule does not require permit coverage for discharges from a facility's exposed areas that are

separate from industrial activities such as runoff from office buildings and accompanying parking lots, lawns and other non-industrial areas. This approach is consistent with the existing storm water rules which were based on Congress's intent to exclude non-industrial areas such as "parking lots and administrative and employee buildings." 133 Cong. Rec. 985 (1987). EPA also lacks data indicating that discharges from these areas at an industrial facility cause significant receiving water impairments. Therefore, the non-industrial areas at a facility do not need to be assessed as part of the "no exposure" certification.

EPA received comments related to industrial facilities that achieve "no exposure" by constructing large amounts of impervious surfaces, such as roofs, where previously there were pervious or porous surfaces into which storm water could infiltrate. Some commenters made the point that large amounts of impervious area may cause a significant increase in storm water volume flowing off the industrial facility, and thus may cause adverse receiving water impacts simply due to the increased quantity of storm water flow. Some commenters said that storm water discharges from impervious areas at an industrial facility are generally more frequent, and often larger, than discharges from the pre-existing natural surfaces. They believe that these discharges will contain pollutants typical of commercial areas and roads and are an equal threat to direct human uses of the water and can cause equal damage to aquatic life and its habitat. Other commenters believe that if Congress or EPA addresses the issue of flow, it should be addressed on a broader scale than merely through the "no exposure" exclusion, and that EPA has no authority under any existing legal framework to regulate flow directly. Some commenters stated that developing federal parameters for the control of water quantity, *i.e.* flow, would result in federal intrusion into land use planning, an authority that they claim is solely within the purview of State governments and their political subdivisions.

EPA is not attempting to regulate flow via the "no exposure" provisions. EPA does agree, however, that increases in impervious surfaces can result in increased runoff volumes from the site which in turn may increase pollutant loading. In addition, the Agency notes that in some States water quality standards include water quality criteria for flow or turbidity. Therefore, in order to provide a minimal amount of information on possible impacts from

increased pollutant loading and runoff volume, EPA's "no exposure" certification form (see Appendix 4) asks the discharger to indicate if they have paved or roofed over a formerly exposed, pervious area in order to qualify for the "no exposure" exclusion. If the answer is yes, the discharger must indicate, by choosing from three possible responses, approximately how much impervious area was created to achieve "no exposure". The choices are: (1) less than 1 acre, (2) 1 to 5 acres, and (3) more than 5 acres. This requirement provides additional information that will aid in determining if discharges from the facility are causing adverse receiving water impacts. EPA intends to prevent water quality impacts resulting from increased discharges of pollutants, which may result from increased volume of runoff. In many cases, consideration of the increased flow rate, velocity and energy of storm water discharges, following construction of large amounts of impervious surfaces, must be taken into consideration in order to reduce the discharge of pollutants, to meet water quality standards and to prevent degradation of receiving streams. EPA recommends that dischargers consider these factors when making modifications to their site in order to qualify for the "no exposure" exclusion.

## 2. Today's Rule

In order to claim relief under the "no exposure" provision, the discharger of an otherwise regulated facility must submit a no exposure certification that incorporates the questions of § 122.26(g)(4)(iii) to the NPDES permitting authority once every 5 years. This provision applies across all categories of industrial activity covered by the existing program, except discharges from construction activities.

In addition to submitting a "no exposure" certification every 5 years, the facility must allow the NPDES permitting authority or operator of an MS4 (where there is a storm water discharge to the MS4) to inspect the facility and to make such inspection reports publicly available upon request. Also, upon request, the facility must submit a copy of the "no exposure" certification to the operator of the MS4 into which the facility discharges (if applicable). All "no exposure" certifications must be signed in accordance with the signatory requirements of § 122.22. The "no exposure" certification is non-transferable. In the event that the facility operator changes, the new discharger must submit a new "no exposure" certification.

Members of the FACA Committee urged that EPA not allow dischargers certifying "no exposure" to take actions to qualify for this provision that result in a net environmental detriment. In developing a regulatory implementation mechanism, however, EPA found that the phrase "no net environmental detriment," was too imprecise to use within this context. Therefore, today's rule addresses this issue by requiring information that should help the permitting authority to determine whether actions taken to qualify for the exclusion interfere with the attainment or maintenance of water quality standards, including designated uses. Permitting authorities will be able, where necessary, to make a determination by evaluating the activities that changed at the industrial site to achieve "no exposure", and assess whether these changes cause an adverse impact on, or have the reasonable potential to cause an instream excursion of, water quality standards, including designated uses. EPA anticipates that many efforts to achieve "no exposure" will employ simple good housekeeping and contaminant cleanup activities. Other efforts may involve moving materials and industrial activities indoors into existing buildings or structures.

In very limited cases, industrial operators may make major changes at a site to achieve "no exposure". These efforts may include constructing a new building or cover to eliminate exposure or constructing structures to prevent run-on and storm water contact with industrial materials or activities. Where major changes to achieve "no exposure" increase the impervious area of the site, the facility operator must provide this information on the "no exposure" certification form as discussed above. Using this and other available data and information, permitting authorities should be able to assess whether any major change has resulted in increased pollutant concentrations or loadings, toxicity of the storm water runoff, or a change in natural hydrological patterns that would interfere with the attainment and maintenance of water quality standards, including designated uses or appropriate narrative, chemical, biological, or habitat criteria where such State or Tribal water quality standards exist. In these instances, the facility operator and their NPDES permitting authority should take appropriate actions to ensure that attainment or maintenance of water quality standards can be achieved. The NPDES permitting authority should decide if the facility must obtain coverage under an

individual or general permit to ensure that appropriate actions are taken to address adverse water quality impacts.

While the intent of today's "no exposure" provision is to reduce the regulatory burdens on industrial facilities and government agencies, the FACA Committee suggested that the NPDES permitting authority consider a compliance assessment program to ensure that facilities that have availed themselves of this "no exposure" option meet the applicable requirements. Inspections could be conducted at the discretion of the NPDES authority and be coordinated with other facility inspections. EPA expects, however, that the permitting authority will conduct inspections when it becomes aware of potential water quality impacts possibly caused by the facility's storm water discharges or when requested to do so by adversely affected members of the public. The intent of this provision is that the 5 year "no exposure" certification be fully available to, and enforceable by, appropriate federal and State authorities under the CWA. Private citizens can enforce against facilities for discharges of storm water that are inconsistent with a "no exposure" certification if storm water discharges from such facilities are not otherwise permitted and in compliance with applicable requirements.

EPA received comments from owners, operators and representatives of Phase I facilities classified as "light industry" as defined by the regulations at § 122.26(b)(14)(xi). The comments recommended maintaining the approach of the existing regulations which does not require the discharger to submit any supporting documentation to the permitting authority in order to claim the "no exposure" exclusion from permitting. As discussed previously, the "no exposure" concept was developed in response to the Ninth Circuit court's remand of part of the existing rules back to EPA. The court found that EPA cannot rely on the "unverified judgment" of the facility. The comments opposing documentation did not address the "unverified judgment" concern.

Today's rule is a "conditional" exclusion from permitting which requires all categories, including the "light industrial" facilities that have no exposure of materials to storm water, to submit a certification to the permitting authority. Upon receipt of a complete certification, the permitting authority can review the information, or call, or inspect the facility if there are doubts about the facility's "no exposure" claim. Also, if the facility discharges into an MS4, the operator of the MS4 can

request a copy of the certification, and can inspect the facility. The public can request a copy of the certification and/or inspection reports. In adopting these conditional "no exposure" provisions, the Agency addressed the Ninth Circuit court's ruling regarding the discharger's unverified judgment.

EPA received one comment requesting clarification on whether the anti-backsliding provisions in the regulations at § 122.44(l) apply to industrial facilities that are currently covered under an NPDES storm water permit, and whether such facilities could qualify for the "no exposure" exclusion under today's rule. The anti-backsliding provisions will not prevent most industrial facilities that can certify "no exposure" under today's rule from qualifying for an exclusion from permitting. The anti-backsliding provisions contain 5 exceptions that allow permits to be renewed, reissued or modified with less stringent conditions. One exception at § 122.44(l)(2)(A) allows less stringent conditions if "material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation." Section 122.44(l)(B)(1) also allows less stringent requirements if "information is available which was not available at the time of permit issuance and which would have justified the application of less stringent effluent limitations at the time of permit issuance." Facility's operators who certify "no exposure" and submit the required information once every 5 years will have provided the permitting authority "information that was not available at the time of permit issuance." Also, some facilities may, in order to achieve "no exposure", make "material and substantial alterations or additions to the permitted facility." Therefore, most facilities covered under existing NPDES general permits for storm water (e.g., EPA's Multi-Sector General Permit) will be eligible for the conditional "no exposure" exclusion from permitting without concern about the anti-backsliding provisions. Such dischargers will have met one or both of the anti-backsliding exceptions detailed above. Facilities that are covered under individual permits containing numeric limitations for storm water should consult with their permitting authority to determine whether the anti-backsliding provisions will prevent them from qualifying for the exclusion from permitting (for that discharge point) based on a certification of "no exposure".

EPA received several comments regarding the timing of when the “no exposure” certification should be submitted. The proposed rule said that the “no exposure” certification notice must be submitted “at the beginning of each permit term or prior to commencing discharges during a permit term.” Some commenters interpreted this statement to mean that existing facilities can only submit the certification at the time a permit is being issued or renewed. EPA intended the phrase “at the beginning of each permit term” to mean “once every 5 years” and today’s rule reflects this clarification. EPA envisions that the NPDES storm water program will be implemented primarily through general permits which are issued for a 5 year term. Likewise the “no exposure” certification term is 5 years. The NPDES permitting authority will maintain a simple registration list that should impose only a minor administrative burden on the permitting authority. The registration list will allow for tracking of industrial facilities claiming the exclusion. This change allows a facility to submit a “no exposure” certification at any time during the term of the permit, provided that a new certification is submitted every 5 years from the time it is first submitted (assuming that the facility maintains a “no exposure” status). Once a discharger has established that the facility meets the definition of “no exposure”, and submits the necessary “no exposure” certification, the discharger must maintain their “no exposure” status. Failure to maintain “no exposure” at their facility could result in the unauthorized discharge of pollutants to waters of the United States and enforcement for violation of the CWA. Where a discharger believes that exposure could occur in the future due to some anticipated change at the facility, the discharger should submit an application and obtain coverage under an NPDES permit prior to such discharge to avoid penalties.

Where EPA is the permitting authority, dischargers may submit a “no exposure” certification at any time after the effective date of today’s rule. Where EPA is not the permitting authority, dischargers may not be able to submit the certification until the non-federal permitting authority completes any necessary statutory or regulatory changes to adopt this “no exposure” provision. EPA recommends that the discharger contact the permitting authority for guidance on when the “no exposure” certification should be submitted.

EPA received comments on the proposed rule requirement that the

discharger “must comply immediately with all the requirements of the storm water program including applying for and obtaining coverage under an NPDES permit,” if changes occur at the facility which cause exposure of industrial activities or materials to storm water. The comments expressed the difficulty of immediate compliance. EPA expects that most facility changes can be anticipated, therefore dischargers should apply for and obtain NPDES permit coverage in advance of changes that result in exposure to industrial activities or materials. Permitting authorities may grant additional time, on a case-by-case basis, for preparation and implementation of a storm water pollution prevention plan.

Finally, today’s rule at § 122.26(g)(4) includes the information which must be included on the “no exposure” certification. Authorized States, Tribes or U.S. Territories may develop their own form which includes this required information, at a minimum. EPA adopted the requirements (with modification) from the draft “No Exposure Certification Form” published as an appendix to the proposed rule. Modifications were made to the draft form to address comments received and to streamline the required information. EPA included these certification requirements in today’s rule in order to preserve its integrity. Dischargers in areas where EPA is the permitting authority should use the “No Exposure Certification” form included in Appendix 4.

### 3. Definition of “No Exposure”

For purposes of this section, “no exposure” means that all industrial materials or activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product. However, storm resistant shelter is not required for: (1) Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak; (2) adequately maintained vehicles used in material handling; and (3) final products, other than products that would be mobilized in storm water discharge (e.g., rock salt). Each of these three exceptions to the no exposure

definition are discussed in more detail below.

EPA intends the term “storm resistant shelter” to include completely roofed and walled buildings or structures, as well as structures with only a top cover but no side coverings, provided material under the structure is not otherwise subject to any run-on and subsequent runoff of storm water. While the Agency intends that this provision promote permanent “no exposure”, EPA understands that certain vehicles could pass between buildings and, during passage, be exposed to rain and snow. Adequately maintained vehicles such as trucks, automobiles, forklifts, or other such general purpose vehicles at the industrial site that are not industrial machinery, and that are not leaking contaminants or are not otherwise a source of industrial pollutants, could be exposed to precipitation or runoff. Such activities alone does not prevent a discharger from being able to certify no exposure under this provision. Similarly, trucks or other vehicles awaiting maintenance at vehicle maintenance facilities, as defined at § 122.26(b)(14)(viii), that are not leaking contaminants or are not otherwise a source of industrial pollutants, are not considered exposed.

In addition, EPA recognizes that there are circumstances where permanent “no exposure” of industrial activities or materials is not possible. Under such conditions, materials and activities may be sheltered with temporary covers, such as tarps, between periods of permanent enclosure. The final rule does not specify every such situation. EPA intends that permitting authorities will address this issue on a case-by-case basis. Permitting authorities can determine the circumstances under which temporary structures will or will not meet the requirements of this section. Until permitting authorities specifically determine otherwise, EPA recommends application of the “no exposure” exclusion for temporary sheltering of industrial materials or activities only during facility renovation or construction, provided that the temporary shelter achieves the intent of this section. Moreover, “exposure” that results from a leak in protective covering would only be considered “exposure” if not corrected prior to the next storm water discharge event. EPA received one comment requesting that this allowance for temporary shelter be limited to facility renovation or construction directly related to the industrial activity requiring temporary shelter, and be scheduled to minimize the use of temporary shelter. Another comment suggested placing time limits



on the use of temporary shelter. The commenter did not recommend a specific time period, rather the comment said that renovation in some instances may take years, and that EPA should not allow temporary shelter over prolonged periods. EPA agrees that the use of temporary shelter must be related to the renovation or construction at the site, and be scheduled or designed to minimize the use of temporary shelter. Further, EPA agrees that the use of temporary shelter should be limited in duration, but does not intend to define "temporary" or "prolonged period".

Many final products are intended for outdoor use and pose little risk of storm water contamination, such as new cars. Therefore, final products, except those that can be mobilized in storm water discharge, can be "exposed" and still allow the discharge to certify "no exposure". EPA intends the term "final products" to mean those products that are not used in producing another product. Any product that can be used to make another product is considered an "intermediate product." For example, a facility that makes horse trailers can store the finished trailers outdoors as a final product. The storage of those final products does not prevent eligibility to claim "no exposure". However, any facility that makes parts for the horse trailers (e.g., metal tubing, sheet metal, paint) is not eligible for the "no exposure" exclusion from permitting if those "intermediate products" are stored outdoors (i.e., "exposed").

EPA received comments related to materials in drums, barrels, tanks and similar containers. Some comments objected to the language in the preamble to the proposed rule that would have recommended that the "exposure" determination for drums and barrels be based on the "potential to leak." Those comments said that all drums and barrels have the potential to leak, thereby making certification impossible. They recommended allowing outdoor storage of drums and barrels except for those that "are leaking" at the time of certification. Other comments suggested allowing drums and barrels to be stored outside only if the drums and barrels: are empty; have secondary containment; or there is a spill contingency plan in place. Opposing comments suggested that allowing outdoor exposure of drums and barrels, based on existing integrity and condition, is inconsistent with the "however packaged" proposed rule language, and also would not satisfy the Ninth Circuit remand. The comments point out that the former rule was invalidated by the court in part because it relied on the "unverified

judgment" of the light industrial facility operator to determine the non-applicability of the permit requirements, and that allowing the facility operator to determine the condition of their drums and barrels would result in the same flaw.

In response, EPA believes that drums and barrels that are stored outdoors pose little risk of storm water contamination unless they are open, deteriorated or leaking. The Agency has modified today's rule accordingly. EPA intends the term "open" to mean any container that is not tightly sealed and "sealed" to mean banded or otherwise secured and without operational taps or valves. Drums, barrels, tanks, and similar containers may only be stored outdoors under this conditional exclusion. The addition of material to or withdrawing of material from these containers while outside is deemed "exposure". Moving the containers while outside does not create "exposure" provided that the containers are not open, deteriorated or leaking. In order to complete the "no exposure" certification, a facility operator must inspect all drums, barrels, tanks or other containers stored outside to ensure that they are not open, deteriorated, or leaking. EPA recommends that the discharger designate someone at the facility to conduct frequent inspections to verify that the drums, barrels, tanks or other containers remain in a condition such that they are not open, deteriorated or leaking. Drums, barrels, tanks or other containers stored outside that have valves which are used to put material in or take material out of the container, and that have dripped or may drip, are considered to be "leaking" and must be under a storm resistant shelter in order to qualify for the no exposure exclusion. Likewise, leaking pipes containing contaminants exposed to storm water are deemed "exposed." If at any time drums, barrels, tanks or similar containers are opened, deteriorated or leaking, the discharger should take immediate actions to close or replace the container. Any resulting unpermitted discharge would violate the CWA. The Director, the operator of the MS4, or the municipality may inspect the facility to verify that all of the applicable areas meet the "no exposure" conditions as specified in the rule language. In requiring submission of the conditional "no exposure" certification and allowing the permitting authority and the operator of the MS4 to inspect the facility, today's rule does not rely on the unverified judgment of the facility to determine that the no exposure provision is being met.

EPA received several comments related to trash dumpsters that are located outside. The preamble to the proposed rule listed dumpsters in the same grouping as drums and barrels, which based exposure on the "potential to leak". Today's rule distinguishes between dumpsters and drums/barrels. In the Phase I Question and Answer document (volume 1, question 52) the Agency noted that a covered dumpster containing waste material that is kept outside is not considered "exposed" as long as "the container is completely covered and nothing can drain out holes in the bottom, or is lost in loading onto a garbage truck." EPA affirms this approach today. Industrial refuse and industrial trash that is left uncovered is deemed "exposed."

For purposes of this provision, particulate matter emissions from roof stacks/vents that are regulated and in compliance under other environmental protection programs, such as air quality control programs, and that do not cause storm water contamination, are considered "not exposed." EPA received comments on the phrase in the draft "no exposure" certification form that asked whether "particulate emissions from roof stacks/vents not otherwise regulated, and in quantities detectable in the storm water outflow," are exposed to precipitation. One comment expressed concern that the phrase "in quantities detectable in the storm water outflow" implies that the facility must conduct monitoring prior to completing the checklist, and must continue to monitor after receiving the no exposure exclusion, in order to be able to verify compliance with the no exposure provision. Another comment said that current measurement technology allows detection of pollutants at levels that may not cause environmental harm. EPA does not intend to require monitoring of runoff from facilities with roof stacks/vents prior to or after completing and submitting the no exposure certification. EPA has thus replaced the phrase "in quantities detectable" with "evident" to convey the message that emissions from some roof stacks/vents have the potential to contaminate storm water discharges in quantities that are considered significant or that cause or contribute to a water quality standards violation. In those instances where the permitting authority determines that particulate emissions from facility roof stacks/vents are a significant contributor of pollutants or contributing to water quality violations, the permitting authority may require the discharger to apply for and obtain coverage under a

permit. Visible deposits of residuals (e.g., particulate matter) near roof or side vents are considered "exposed". Likewise, visible "track out" (i.e., pollutants carried on the tires of vehicles) or windblown raw materials are deemed "exposed."

EPA received a comment requesting an allowance under the "no exposure" provision for industrial facilities with several outfalls at a site where some, but not all of the outfalls drain non-exposed areas. The commenter provided an example of an industrial facility that has 5 outfalls draining different areas of the site, where two of those outfalls drain areas where industrial activities or materials are not exposed to storm water. The comment requested that the facility in this example be allowed to submit a "no exposure" certification in order to be relieved of permitting obligations for discharges from those two outfalls.

EPA agrees, but the comment would be implemented on an outfall-by-outfall basis in the permitting process, not through the "no exposure" exclusion. The "no exposure" provision was developed to allow exclusion from permitting of discharges from entire industrial facilities (except construction), based on a claim of "no exposure" for all areas of the facility where industrial materials or activities occur. Where exposure to industrial materials or activities exist at some but not all areas of the facility, the "no exposure" exclusion from permitting is not allowed because permit coverage is still required for storm water discharges from the exposed areas. Relief from permit requirements for outfalls draining non-exposed areas should be addressed through the permit process, in coordination with the permitting authority. Most NPDES general permits for storm water discharge provide enough flexibility to allow minimal or no requirements for non-exposed areas at industrial facilities. If the permitting authority determines that additional flexibility is needed for this scenario, the permits could be modified as necessary.

#### K. Public Involvement/Public Role

The Phase II FACA Subcommittee discussed the appropriate role of the public in successful implementation of a municipal storm water program. EPA believes that an educated and actively involved public is essential to a successful municipal storm water program. An educated public increases program compliance from residents and businesses as they realize their individual and collective responsibility for protecting water resources (e.g., the

residents and businesses could be subject to a local ordinance that prohibits dumping used oil down storm sewers). Finally, the program is also more likely to receive public support and participation when the public is actively involved from the program's inception and allowed to participate in the decision making process.

In a time of limited staff and financial resources, public volunteers offer diverse backgrounds and expertise that may be used to plan, develop, and implement a program that is tailored to local needs (e.g., participate in public meetings and other opportunities for input, perform lawful volunteer monitoring, assist in program coordination with other preexisting and related programs, aid in the development and distribution of educational materials, and provide public training activities). The public's participation is also useful in the areas of information dissemination/education and reporting of violators, where large numbers of community members can be more effective than a few regulators.

The public can also petition the NPDES permitting authority to require an NPDES permit for a discharge composed entirely of storm water that contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. In evaluating such a petition, the NPDES permitting authority is encouraged to consider the set of designation criteria developed for the evaluation of small MS4s located outside of an urbanized area in places with a population of at least 10,000 and a population density of 1,000 or more. Furthermore, any person can protect water bodies by taking civil action under section 505 of the CWA against any person who is alleged to be in violation of an effluent standard or permit condition. If civil action is taken, EPA encourages citizen plaintiffs to resolve any disagreements or concerns directly with the parties involved, either informally or through any available alternative dispute resolution process.

EPA recognizes that public involvement and participation pose challenges. It requires a substantial initial investment of staff and financial resources, which could be very limited. Even with this investment, the public might not be interested in participating. In addition, public participation could slow down the decision making process. However, the benefits are numerous.

EPA encourages members of the public to contact the NPDES permitting authority or local MS4s operator for information on the municipal storm water program and ways to participate.

Such information may also be available from local environmental, nonprofit and industry groups.

Some commenters stressed the need to suggest to the public that they have a responsibility to fund the municipal storm water program. While EPA believes it is important that the program be adequately funded, today's rule does not address appropriate mechanisms or levels for such funding.

EPA received comments expressing concern that considerable public involvement requirements could result in increased litigation. EPA is not convinced there is a correlation between meaningful public education programs and any increased probability of litigation.

Finally, EPA received comments stating that the Agency should not encourage volunteer monitoring unless proper procedures are followed. EPA agrees. EPA encourages only lawful monitoring, i.e., obtaining the necessary approval if there is any question about lawful access to sites. Moreover, as a matter of good practice and to enhance the validity and usefulness of the results, any party, public or private, conducting water quality monitoring is encouraged to use appropriate quality control procedures and approved sampling and analytic methods.

#### L. Water Quality Issues

##### 1. Water Quality Based Effluent Limits

In addition to technology based requirements, all point source discharges of industrial storm water are subject to more stringent NPDES permitting requirements when necessary to meet water quality standards. CWA sections 402(p)(3)(A) and 301(b)(1)(C). For municipal separate storm sewers, EPA or the State may determine that other permit provisions (e.g. one of the minimum measures) are appropriate to protect water quality and, for discharges to impaired waters, to achieve reasonable further progress toward attainment of water quality standards pending implementation of a TMDL. CWA section 402(p)(3)(B)(iii). See *Defenders of Wildlife, et al. Browner*, No. 98-71080 (9th cir., August 11, 1999). Discharges of storm water also must comply with applicable antidegradation policies and implementation methods to maintain and protect water quality. 40 CFR 131.12. Section 122.34(a) emphasizes this point by specifically noting that a storm water management program designed to reduce the discharge of pollutants from the storm sewer system "to the maximum extent practicable" is also designed to protect water quality.

Permits issued to non-municipal sources of storm water must include water quality-based effluent limits where necessary to meet water quality standards.

Commenters challenged EPA's interpretation of the CWA as requiring water quality-based effluent limits for MS4s when necessary to protect water quality. Commenters asserted that CWA 402(p)(3)(B), which addresses permit requirements for municipal discharges, limits the scope of municipal program requirements to an effective prohibition on non-storm water discharges to a separate storm sewer and to controls which reduce pollutants to the "maximum extent practicable, including management practices, control techniques and system design and engineering methods." They asserted that the final rule should clarify that neither numeric nor narrative water quality-based limits are appropriate or authorized for MS4s.

EPA disagrees that section 402(p)(3) divests permitting authorities of the tools necessary to issue permits to meet water quality standards. Section 402(p)(3)(B)(iii) specifically preserves the authority for EPA or the State to include other provisions determined appropriate to reduce pollutants in order to protect water quality. *Defenders of Wildlife*, slip op. at 11688. Small MS4s regulated under today's rule are designated under CWA 402(p)(6) "to protect water quality."

Commenters argued that water quality standards, particularly numeric criteria, were not designed to address storm water discharges. The episodic nature and magnitude of storm water events, they argue, make it impossible to apply the "end of pipe" compliance assessment approach, for example, in the development of water quality based effluent limits.

EPA's disagrees with the commenters arguments about the inability of water quality criteria to address high flow conditions. Today's final rule does, however, address the concern that numeric effluent limits will necessitate end of pipe treatment and the need to provide a workable alternative.

Today's rule was developed under the approach outlined in the Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits, issued on August 1, 1996. 61 FR 43761 (November 26, 1996) (the "Interim Permitting Policy"). EPA intends to issue NPDES permits consistent with the Interim Permitting Policy, which provides as follows:

In response to recent questions regarding the type of water quality-based effluent limitations that are most

appropriate for NPDES storm water permits, EPA is adopting an interim permitting approach for regulating wet weather storm water discharges. Due to the nature of storm water discharges, and the typical lack of information on which to base numeric water quality-based effluent limitations (expressed as concentration and mass), EPA will use an interim permitting approach for NPDES storm water permits.

"The interim permitting approach uses best management practices (BMPs) in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards. In cases where adequate information exists to develop more specific conditions or limitations to meet water quality standards, these conditions or limitations are to be incorporated into storm water permits, as necessary and appropriate. This interim permitting approach is not intended to affect those storm water permits that already include appropriately derived numeric water quality-based effluent limitations. Since the interim permitting approach only addresses water quality-based effluent limitations, it also does not affect technology-based effluent limitations, such as those based on effluent limitations guidelines or developed using best professional judgment, that are incorporated into storm water permits.

"Each storm water permit should include a coordinated and cost-effective monitoring program to gather necessary information to determine the extent to which the permit provides for attainment of applicable water quality standards and to determine the appropriate conditions or limitations of subsequent permits. Such a monitoring program may include ambient monitoring, receiving water assessment, discharge monitoring (as needed), or a combination of monitoring procedures designed to gather necessary information.

"This interim permitting approach applies only to EPA; however, EPA also encourages authorized States and Tribes to adopt similar policies for storm water permits. This interim permitting approach provides time, where necessary, to more fully assess the range of issues and possible options for the control of storm water discharges for the protection of water quality. This interim permitting approach may be modified as a result of the ongoing Urban Wet Weather Flows Federal Advisory Committee policy dialogue on this subject."

One commenter challenged the Interim Permitting Policy on a procedural basis, arguing that it was published without opportunity for public notice and comment. In response, EPA notes that the Policy was included verbatim and made available for public comment in the proposal to today's final rule. Prior to that proposal, the Agency defended the application of the Policy on a case-by-case basis in individual permit proceedings. Moreover, the essential elements of the Policy—that narrative effluent limitations are the most appropriate form of effluent limitations for storm water dischargers from municipal sources—was inherent in § 122.34(a) of the proposed rule, and was the subject of extensive public comment. In any event, the Policy does not constitute a binding obligation. It is policy, not regulation.

Consistent with the recognition of data needs underlying the Policy, EPA will evaluate the small MS4 storm water regulations after the second round of permit issuance. Section 122.34(e)(2) of today's rule expressly provides that for the interim ten-year period, "EPA strongly recommends that until the evaluation of the storm water program in § 122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality." This approach addresses the concern for protecting water resources from the threat posed by storm water discharges with the important qualification that there must be adequate information on the watershed or a specific site as a basis for requiring tailored storm water controls beyond the minimum control measures. As indicated, the Interim Permitting Policy has several important limitations—it does not apply to technology-based controls or to sources that already have numeric end of pipe effluent limitations. EPA encourages authorized States and Tribes to adopt policies similar to the Interim Permitting Policy when developing storm water discharge programs. For a discussion of appropriate monitoring activities, see Section H.3.d., Evaluation and Assessment.

Where a water quality analysis indicates there is a need and basis for deriving water quality-based effluent limits in NPDES permits for storm water discharges regulated under today's rule, EPA believes that most of these cases would be satisfied by narrative effluent

limitations that require the implementation of BMPs. NPDES permit limits will in most cases continue to be based on the specific approach outlined in today's rule for the implementation of BMPs as the most appropriate form of effluent limitation to satisfy technology and water quality-based requirements. See § 122.34(a). For storm water management plans with existing BMPs, this may require further tailoring of BMPs to address the pollutant(s) of concern, the nature of the discharge and the receiving water. If the permitting authority determines that, through implementation of appropriate BMPs required by the NPDES storm water permit, the discharge has the necessary controls to provide for attainment of water quality standards, additional controls are not needed in the permit. Conversely, if a discharger (MS4, industrial or construction) fails to adopt and implement adequate BMPs, the permittee and/or the permitting authority should consider a different mix of BMPs or more specific conditions to ensure water quality protection.

Some commenters observed that there was no evidence from the experience of storm water dischargers regulated under the existing NPDES storm water program, or from studies or reports that allegedly support EPA's position, that implementation of BMPs to satisfy the six minimum control measures would meet applicable water quality standards for a regulated small MS4. In response, EPA acknowledges that the six minimum measures are intended to implement the statutory requirement to control discharges to the maximum extent practicable, and they may not result in the attainment of water quality standards in all cases. The control measures do, however, focus on and address well-documented threats to water quality associated with storm water discharges. Based on the collective expertise of the FACA Subcommittee, EPA believes that implementation of the six minimum measures will, for most regulated small MS4s, be adequate to protect water quality, and for other regulated small MS4s will substantially reduce the adverse impacts of their discharges on water quality.

Some commenters asserted that analyses of existing water quality criteria suggest that numeric criteria for aquatic life may be overprotective if applied to storm water discharges. These comments maintained that an approach that prohibits exceedance of applicable water quality criteria is unworkable. Various commenters recommended wet weather specific

criteria, variances to the criteria during wet weather events, and seasonal designated uses. Other commenters noted that water quality-based effluent limits in NPDES permits have traditionally been developed based on dry weather flow conditions (e.g., assuming critical low-flow conditions in the receiving water to ensure protection of aquatic life and human health). Wet weather discharges, however, typically occur under high-flow conditions in the receiving water. Assumptions regarding mass balance equations and size of mixing zones may also not be pertinent during wet weather.

EPA acknowledges the need to devise a regulatory program that is both flexible enough to accommodate the episodic nature, variability and volume of wet weather discharges and prescriptive enough to ensure protection of the water resource. EPA believes that wet weather discharges can be adequately addressed in the existing regulations through refining designated uses and assigning criteria that are tailored to the level of water quality protection described by the refined designated use.

EPA believes that lack of precision in assigning designated uses and corresponding criteria by States and Tribes, in many cases may result in application of water quality criteria that may not appropriately match the intended condition of the water body. States and Tribes have frequently designated uses without regard to site-specific wet weather conditions. Because certain uses (swimming, for example) might not exist during high-intensity storm events or in the winter, States may factor such climatic conditions and seasonal uses into their use designations with appropriate analyses. This would acknowledge that a lower level of control, at lower compliance cost, would be appropriate to protect that use. Before modifying any designated use, however, States would need to evaluate the effect of less stringent water quality criteria on protecting other uses, including any threatened or endangered species, drinking water supplies and downstream uses. EPA will further evaluate these issues in the context of the Water Quality Standards Regulation, Advance Notice of Proposed Rule Making (ANPRM), 63 FR, 36742, July 7, 1998.

One of the major themes presented by EPA in the ANPRM is that refinement in use designations and tailoring of water quality criteria to match refined use designations is an important future direction of the water quality standards program. In assigning criteria to protect

general use classifications, a State or Tribe must ensure that the criteria are sufficiently protective to safeguard the full range of waters of the State, *i.e.*, criteria would be based on the most sensitive use. This approach has been disputed, especially for aquatic life uses, where evidence suggests that the general use criteria will require controls more stringent than needed to protect the existing or potential aquatic life community for a specific water body. EPA recognizes that there is a growing need to more precisely tailor use descriptions and criteria to match site-specific conditions, ensuring that uses and criteria provide an appropriate level of protection, which, to the extent possible, are not overprotective. EPA is engaged in an ongoing evaluation of its regulations in this area through the ANPRM effort. At the same time, EPA continues to encourage States and Tribes to review the applicability of the designated uses and associated criteria using existing provisions in the water quality standards regulation.

## 2. Total Maximum Daily Loads and Analysis To Determine the Need for Water Quality-Based Limitations

The development and implementation of total maximum daily loads (TMDLs) provide a link between water quality standards and effluent limitations. CWA section 303(d) requires States to develop TMDLs to provide more stringent water quality-based controls when technology-based controls are inadequate to achieve applicable water quality standards. A TMDL is the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources, with consideration for natural background conditions. A TMDL quantifies the maximum allowable loading of a pollutant to a water body and allocates this maximum load to contributing point and nonpoint sources so that water quality criteria will not be exceeded and designated uses will be protected. A TMDL also includes a margin of safety to account for uncertainty about the relationship between pollutant loads and water quality.

Today's final rule refers to TMDLs in several provisions. For the purpose of today's rule, EPA relies on the component of the TMDL that evaluates existing conditions and allocates loads. For discharges to waters that are not impaired and for which a TMDL has not been developed, today's rule also refers to an "equivalent analysis." The discussion that follows uses the term "TMDL" for both.

Under revised § 122.26(a)(9)(i)(C), the permitting authority may designate

storm water discharges that require NPDES permits based on TMDLs that address the pollutants of concern. For storm water discharges associated with small construction activity, § 122.26(b)(15)(i)(B) provides a waiver provision where it may be determined that storm water controls are not needed based on TMDLs that address sediment and any other pollutants of concern. The NPDES permitting authority may waive requirements under the program for certain small MS4s within urbanized areas serving less than 1,000 persons provided that, if the small MS4 discharges any pollutant that has been identified as a cause of impairment of a water body into which it discharges, the discharge is in compliance with a wasteload allocation in a TMDL for the pollutant of concern. The permitting authority may also waive requirements for MS4s in urbanized areas serving between 1,000 and 10,000 persons, if the permitting authority determines that storm water controls are not needed, as provided in § 123.35(d)(2). See § 122.32(c).

Under CWA section 303(d), States identify which of their water bodies need TMDLs and rank them in order of priority. Generally, once a TMDL has been completed for one or more pollutants in a water body, a wasteload allocation for each point source discharging the pollutant(s) is implemented as an enforceable condition in the NPDES permit. Regulated small MS4s are essentially like other point source discharges for purposes of the TMDL process.

A TMDL and the resulting wasteload allocations for pollutant(s) of concern in a water body may not be available because the water body is not on the State's 303(d) list, the TMDL has not yet been completed, or the TMDL did not include specific pollutants of concern. In these cases, the permitting authority must determine whether point sources discharge pollutant(s) in amounts that cause, have the reasonable potential to cause, or contribute to excursions above State water quality standards, including narrative water quality criteria. This so-called "reasonable potential" analysis is intended to determine whether and for what pollutants water quality based effluent limits are required. The analysis is, in effect, a substitute for a similar determination that would be made as part of a TMDL, where necessary. When "reasonable potential" exists, regulations at § 122.44(d) require a water quality-based effluent limit for the pollutant(s) of concern in NPDES permits. The water quality-based effluent limits may be narrative requirements to implement BMPs or,

where necessary, may be numeric pollutant effluent limitations.

Commenters, generally from the regulated community, objected that, due to references to the need to develop a program "to protect water quality" and to additional NPDES permit requirements beyond the minimum control measures based on TMDLs or their equivalent, regulated small MS4s will be subject to uncertain permit limitations beyond the six minimum control measures. Commenters also asserted that through the imposition of a wasteload allocation under a TMDL in impaired water bodies, there is a likelihood that unattainable, yet enforceable narrative and numeric standards will be imposed on regulated small MS4s.

As is discussed in the preceding section, NPDES permits must include any more stringent limitations when necessary to meet water quality standards. However, even if a regulated small MS4 is subject to water quality based effluent limits, such limits may be in the form of narrative effluent limitations that require the implementation of BMPs. As discussed earlier, EPA has adopted the Interim Permitting Policy and incorporated it in the development of today's rule to recognize the appropriateness of BMP-based limits developed on a case-by-case basis.

EPA formed a Federal Advisory Committee to provide advice to EPA on identifying water quality-limited water bodies, establishing TMDLs for them as appropriate, and developing appropriate watershed protection programs for these impaired waters in accordance with CWA section 303(d). Operating under the auspices of the National Advisory Council for Environmental Policy and Technology (NACEPT), the committee produced its *Report of the Federal Advisory Committee on the Total Maximum Daily Load (TMDL) Program* (July 1998). EPA recently published a proposed rule to implement the Report's recommendations (64 FR 46012, August 23, 1999).

### 3. Anti-Backsliding

In general, the term "anti-backsliding" refers to statutory provisions at CWA sections 303(d)(4) and 402(o) and regulatory provisions at 40 CFR 122.44(l). These provisions prohibit the renewal, reissuance, or modification of an existing NPDES permit that contain effluent limits, permit terms, limitations and conditions, or standards that are less stringent than those established in the previous permit. There are also

exceptions to this prohibition known as "antibacksliding exceptions."

The issue of backsliding from prior permit limits, standards, or conditions is not expected to initially apply to most storm water dischargers designated under today's proposal because they generally have not been previously authorized by an NPDES permit. However, the backsliding prohibition would apply if a storm water discharge was previously covered under another NPDES permit. Also, the backsliding prohibition could apply when an NPDES storm water permit is reissued, renewed, or modified. In most cases, however, EPA does not believe that these provisions would restrict revisions to storm water NPDES permits.

One commenter questioned whether, if BMPs implemented by a regulated small MS4 operator fail to produce results in removal of pollutants and the permittee attempts to substitute a more effective BMP, the small MS4 operator could be accused of violating the anti-backsliding provisions and also be exposed to citizen lawsuits. In response, EPA notes that in such circumstances the MS4's permit has not changed and, therefore, the prohibition against backsliding is not applicable. Further, any change in the mix of BMPs that was intended to be more effective at controlling pollutants would not be considered backsliding, even if it did not include all of the previously implemented BMPs.

### 4. Water Quality-Based Waivers and Designations

Several sections of today's final rule refer to water quality standards in identifying those storm water discharges that are and are not required to be permitted under today's rule. As noted in § 122.30 of today's rule, CWA section 402(p)(6) requires the designation of municipal storm water sources that need to be regulated to protect water quality and the establishment of a comprehensive storm water program to regulate these sources. Requirements applicable to certain municipal sources may be waived based on the absence of demonstrable water quality impacts. Section 122.32(c). The section 402(p)(6) mandate to protect water quality also provides the basis for regulating discharges associated with small construction. See also § 122.26(b)(15)(i). Further, today's rule carries forward the existing authority for the permitting authority to designate sources of storm water discharges based upon water quality considerations. Section 122.26(a)(9)(i)(C) and (D).

As is discussed above in sections II.H.2.e (for small MS4s) and II.I.1.b.ii

(for small construction), the requirements of today's rule may be waived based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutants of concern or, in the case of small construction and municipalities serving between 1,000 and 10,000 persons, the equivalents of TMDLs. One commenter stated that waivers would allow exemptions to the technology based requirements and would thus be inconsistent with the two-fold approach of the CWA (a technology based minimum and a water quality based overlay). EPA acknowledges that waivers are not allowed for other technology-based requirements under the CWA. A more flexible approach is allowed, however, for sources designated for regulation under 402(p)(6) to protect water quality. For such sources EPA may allow a waiver where it is demonstrated that an individual source does not present the

threat to water quality that was the basis for EPA's designation.

### III. Cost-Benefit Analysis

EPA has determined that the range of the rule's benefits exceeds the range of regulatory costs. The estimated rule costs range from \$847.6 million to \$981.3 million annually with corresponding estimated monetized annual benefits which range from \$671.5 million to \$1.628 billion, expected to exceed costs.

The rule's cost and benefit estimates are based on an annual comparison of costs and benefits for a representative year (1998) in which the rule is implemented. This differs from the approach used for the proposed rule which projected cost and benefits over three permit terms. EPA has chosen to use the current approach because it determined that the ratio of annual benefits and costs would not change significantly over time. Moreover,

because there is not an initial outlay of capital costs with benefits accruing in the future (i.e., benefits and costs are almost immediately at a steady state), it is not necessary to discount costs in order to account for a time differential.

EPA developed detailed estimates of the costs and benefits of complying with each of the incremental requirements imposed by the rule. The Agency used two approaches, a national water quality model and national water quality assessment, to estimate the potential benefits of the rule. Both approaches show that the benefits are likely to exceed costs.

These estimates, including descriptions of the methodology and assumptions used, are described in detail in the *Economic Analysis of the Final Phase II Rule*, which is included in the record of this rule making. Exhibit 3 summarizes costs and benefits associated with the basic elements of today's rule.

EXHIBIT 3.—COMPARISON OF ANNUAL COMPLIANCE COST AND BENEFIT ESTIMATES <sup>1</sup>

Monetized benefits		National water quality model (millions of 1998 dollars)	National water quality assessment (millions of 1998 dollars)
Municipal Minimum Measures .....	.....	.....	\$131.0–\$410.2
Controls for Construction Sites .....	.....	.....	\$540.5–\$686.0
Total Annual Benefits .....	.....	\$1,628.5 .....	\$671.5–\$1,096.2
Costs		Millions of 1998 dollars <sup>2</sup>	
Municipal Minimum Measures .....	.....	\$297.3	
Controls/Waivers for Construction Sites .....	.....	\$545.0–\$678.7	
Federal/State Administrative Costs .....	.....	\$5.3	
Total Annual Costs .....	.....	\$847.6–\$981.31	

<sup>1</sup> National level benefits are not inclusive of all categories of benefits that can be expected to result from the regulation.

<sup>2</sup> Total may not add due to rounding.

#### A. Costs

##### 1. Municipal Costs

Initially, to determine municipal costs for the proposed rule, EPA used anticipated expenditure data included in permit applications from a sample of 21 Phase I MS4s. Certain commenters criticized the Agency for using anticipated expenditures because they could be significantly different from the actual expenditures. These commenters suggested that the Agency use the actual cost incurred by the Phase I MS4s. Other comments stated that because the Phase I MS4s, in general, are large municipalities, they may not be representative of the Phase II MS4s for estimating regulatory costs. Finally, one commenter noted that the sample of 21 municipalities used to project cost was relatively small.

To address the concerns of the commenters, EPA utilized a National Association of Flood and Stormwater Management Agencies (NAFSMA) survey of the Phase II community to obtain incremental cost estimates for Phase II municipalities. Using the list of potential Phase II designees published in the **Federal Register** (63 FR 1616), NAFSMA contacted more than 1,600 jurisdictions. The goal of the survey was to solicit information from those communities about the proposed Phase II NPDES storm water program. Several of the survey questions corresponded directly to the minimum measures required by the Phase II rule. One hundred twenty-one surveys were returned to NAFSMA and were used to develop municipal costs.

Using the NAFSMA information, EPA estimated average annual per household

program costs for automatically designated municipalities. EPA also estimated an average annual per household administrative cost for municipalities to address application, record keeping, and reporting requirements of the Rule. The total average per household cost of the rule is expected to \$9.16 per household.

To determine potential national level costs for municipalities, EPA multiplied the number of households (32.5 million) by the per household cost (\$9.16). EPA estimates the annual cost of the Phase II municipal program at \$298 million.

As an alternative method, and point of comparison, to the NAFSMA-based approach, EPA reviewed actual expenditures reported from 35 Phase I MS4s. The Agency targeted these 35 Phase I MS4s because they had participated in the NPDES program for

nearly one permit term, were smaller in size and had detailed data reflecting their actual program implementation costs. Of the 35 MS4s, appropriate cost data was only available for 26 of those MS4s. EPA analyzed the expenditure data and identified the relevant expenditures, excluding costs presented in the annual reports unrelated to the requirements of the Rule. The cost range and annual per household program costs of \$9.08 are similar to those found using the NAFSMA survey data.

## 2. Construction Costs

In order to estimate the rule's construction-related cost on a national level (the soil and erosion controls (SEC) requirements of the rule and the potential impacts of the post-construction municipal measure on construction), EPA estimated a per site cost for sites of one, three, and five acres and multiplied these costs by the total number of estimated Phase II construction starts across these size categories.

To estimate the percentage of starts subject to the soil and erosion control requirements between 1 and 5 acres, with respect to each category of building permits (residential, commercial, *etc.*), EPA initially used data from Prince George's County (PGC), Maryland, and applied these percentages to national totals. In the proposal, EPA recognized that the PGC data may not be representative of the entire country and requested data that could be used to develop better estimates of the number of construction sites between 1 and 5 acres. EPA did not receive any substantiated national data from commenters.

In view of the unavailability of national data from commenters, EPA made extensive efforts to collect construction site data around the country. The Agency contacted more than 75 municipalities. EPA determined that 14 of the contacted municipalities had useable construction site data. Using data from these 14 municipalities, EPA developed an estimate of the percentage of construction starts on one to five acres. EPA then multiplied this percentage by the number of building permits issued nationwide to determine the total number of construction starts occurring on one to five acres. Finally, to isolate the number of construction starts incrementally regulated by Phase II, EPA subtracted the number of activities regulated under equivalent programs (*e.g.*, areas covered by the Coastal Zone Act Reauthorization Amendments of 1990, and areas covered by equivalent State level soil and erosion control requirements).

Ultimately, EPA estimated that 110,223 construction starts would be incrementally covered by the rule annually.

EPA then used standard cost estimates from *Building Construction Cost Data* and *Site Work Landscape Cost Data* (R.S. Means, 1997a and 1997b) to estimate construction BMP costs for 27 model sites in a variety of typical site conditions across the United States. The model sites included three different site sizes (one, three and five acres), three slope variations (3%, 7%, and 12%), and three soil erosivity conditions (low, medium, and high). EPA chose BMP combinations appropriate to the model site conditions. Based on the assumption that any combination of site factors is equally likely to occur in a given site, EPA developed average cost of sediment and erosion control for all model sites. EPA estimated that, on average, BMPs for a 1 acre site will cost \$1,206, for a 3 acre site \$4,598 and for a 5 acre site \$8,709.

EPA then estimated administrative costs per construction site for the following elements required under the rule: Submittal of a notice of intent for permit coverage; notification to municipalities; development of a storm water pollution prevention plan; record retention; and submittal of a notice of termination. EPA estimated the average total administrative cost per site to be \$937.

EPA also considered the cost implications of NPDES permit authorities waiving the applicability of requirements to storm water discharges from small construction sites based on two different criteria involving water quality impact and low rainfall. EPA received comments stating that a waiver would require a significant investment in training or acquisition of a consultant. Based on comments received, EPA eliminated one of the waiver conditions involving low soil loss threshold because it necessitated use of the Revised Universal Soil Loss Equation which could require extensive technical expertise.

Based on the opinions of construction industry experts, EPA estimates that 15 percent of the construction sites that would otherwise be covered by today's rule will be eligible to receive waivers. Therefore, the Agency has excluded 15 percent of the construction sites when deriving costs of sediment and erosion control. The average cost for sites to qualify for the waiver is expected to be \$34 per site. The construction cost analysis for the proposed rule did not include any costs for the preparation and submission of waiver applications

because EPA believed those costs would be negligible. However, in response to public comments, EPA has estimated these potential costs.

EPA has also estimated the potential costs for construction site operators to implement the post-construction minimum measure. These are costs that may be incurred by construction site operators if the MS4 chooses to meet the post-construction minimum measure by requiring on-site structural, site-by-site control of post-construction runoff. Municipalities may select from an array of structural and non-structural options in implementing this measure, so the potential costs to construction operators is uncertain. Nonetheless, EPA developed average annual BMP costs for sites of one, three, five and seven acres. EPA's analysis accounted for varying levels of imperviousness that characterize residential, commercial, and institutional land uses. Nationwide, these costs are expected to range from \$44 million to \$178 million annually.

Finally, to establish national incremental annual costs for Phase II construction starts, EPA multiplied the total costs of compliance for the chosen site size categories by the total number of Phase II construction starts and added post-construction costs. EPA estimates the annual compliance cost to range from \$545 million to \$678.7 million.

## B. Quantitative Benefits

In the Economic Analysis for the proposed rule, a "top-down" approach was used to estimate economic benefits. Under this approach, the combined economic benefits for wet weather programs were estimated first, and then were divided among various water programs on the basis of expert opinion. As a result, the benefits estimates for an individual program were rather uncertain. Moreover, this approach was inconsistent with the approach used to estimate the cost of the proposed storm water rule, which was developed using municipal-based and cost-based data to develop "bottom-up" costs. Therefore, EPA decided to use a "bottom-up" approach for estimating benefits of the Phase II rule. To adequately reflect the quantifiable benefits of the rule, EPA used two different methods: (1) National Water Quality Model and (2) National Water Quality Assessment.

To monetize benefits in both approaches, the Agency applied Carson and Mitchell's (1993) estimates of household willingness-to-pay (WTP) for water quality improvement to estimates of waters impaired by storm water discharges. Carson and Mitchell's 1993 study reports the results of their 1983 national survey of WTP for incremental



improvements in fresh water quality. Carson and Mitchell estimate the WTP for three minimum levels of fresh water quality: boatable, fishable, and sizable. EPA adjusted the WTP amounts to account for inflation, growth in real per capita income, and increased attitudes towards pollution control. The adjusted WTP amounts for improvements in fresh water quality are \$210 for boatable, \$158 for fishable, and \$177 for sizable. A brief summary of the national water quality model and national water quality assessment approaches follow.

#### 1. National Water Quality Model

One approach EPA used to estimate the benefits of the Phase II municipal and construction site controls was the National Water Pollution Control Assessment Model (NWPCAM). NWPCAM estimates benefits of the storm water program at the national level, including the impact on small streams. This model estimates water quality and the resultant use support for the 632,000 miles of rivers and streams in the USEPA Reach File Version 1 (RF1), which covers the continental

United States. The model analyzes water quality changes by stream reach. The parameters modeled in the NWPCAM are biological oxygen demand (BOD), total suspended solids (TSS), dissolved oxygen (DO), and fecal coliforms (FC).

The model projects changes in water quality due to the Phase II municipal and construction site controls. To calculate the economic benefits of change in water quality, the number of households in the proximity of the stream reach are determined, by overlaying the model results on the 1990 Census of Populated Places and Minor Civil Divisions, and updating the population to 1998. Economic benefits are calculated using the Carson and Mitchell WTP values. The benefits are separately estimated for local and non-local waters on the basis of WTP values and proximity to water quality changes.

The value of the change in use support for local waters is greater than the value of the non-local waters because of the opportunity to use local waters by the local population. This model assumes that if improvement

occurs in waters that are not close to population centers the economic value is lower. Therefore, benefits are estimated for local and non-local waters separately. This assumption is based on Carson and Mitchell's survey which asked respondents to apportion each of their stated WTP values between achieving the water quality goals in their own State and achieving those goals in the nation as a whole. On average, respondents allocated 67% of their values to achieving in-State water quality goals and the remainder to the nation as a whole. Carson and Mitchell argue that for valuing local water quality changes 67% is a reasonable upper bound for the local multiplier and 33% for the non-local water quality changes. For the purposes of this analysis, the locality is defined as urban sites and associated populations linked into the NWPCAM framework. Using this methodology, the total monetized benefits of Phase II control of urban and construction site runoff is estimated to be \$1.628 billion per year. The local and non-local benefits due to Phase II controls are presented in Exhibit 4.

EXHIBIT 4.—LOCAL AND NON-LOCAL BENEFITS ESTIMATES DUE TO PHASE II CONTROLS NATIONAL WATER QUALITY MODEL ESTIMATE

Use support	Local benefits (\$million/yr)	Non-local benefits <sup>1</sup> (\$million/yr)	Total benefits (\$million/yr)
Swimming, Fishing, and Boating .....	306.20	60.60	366.80
Fishing and Boating .....	395.10	51.90	447.00
Boating .....	700.10	114.60	814.70
Total .....	1401.40	227.10	1628.50

<sup>1</sup> To estimate non-local willingness to pay per household, the 33% of willingness is multiplied by the fraction of previously impaired national waters (in each use category) that attain the beneficial use as a result of the Phase II rule. To estimate the aggregate non-local benefits, non-local willingness to pay is multiplied with the total number of households in the US.

While the numbers of miles that are estimated to change their use support are small, the benefits estimates are quite significant. This is because urban runoff and, to a large extent, construction activity occurs where the people actually reside and the water quality changes mostly occur close to these population centers. NWPCAM indicates that changes in pollution loads have the most effect immediately downstream of pollution changes. As a result, the aggregate WTP is large because large numbers of households in these population centers are associated with the local waters that reflect improvement in designated use support.

#### 2. National Water Quality Assessment

EPA also estimated benefits of the Phase II Storm Water program using the 1998 National Water Quality Inventory (305(b)) Report to Congress, rather than

the NWPCAM as a basis for estimating impairment addressed by the rule. The Water Quality Assessment method separately estimates benefits associated with improvements to fresh water, marine water and construction site controls, and then aggregates these separate categories into an estimate of total annual benefits.

##### a. Municipal Measures

##### i. Fresh Waters Benefits

In order to develop estimates for the potential value of the municipal measures (except storm water runoff controls for construction sites), EPA applied Carson & Mitchell WTP values to estimated existing and projected future fresh water impairment. Carson & Mitchell did not evaluate marine waters, so only fresh water values were available from their research. Even

though the Carson and Mitchell estimates apply to all fresh water, it is not clear how these values would be apportioned among rivers, lakes, and the Great Lakes. The 305(b) data indicate that lakes are the most impaired by urban runoff/storm sewers, followed closely by the Great Lakes, and then rivers. Therefore, EPA applied the WTP values to the categories separately and assumed that the higher resulting value for lakes represents the high end of the range (*i.e.*, assuming that lake impairment is more indicative of national fresh water impairment) and that the lower resulting value for impaired rivers represents the low end of a value range for all fresh waters (*i.e.*, assuming that river impairment is more indicative of national fresh water impairment). In addition, EPA estimated that the post-construction runoff

requirements of the municipal program might result in benefits of at least \$16.8 million annually from avoided future runoff. The post-construction estimate significantly underestimates potential program benefits because it does not account for avoided hydrologic changes and resulting water quality impairment associated with increases in imperviousness from development and redevelopment. Summing the benefits across the water quality use support levels yields an estimate of benefits ranging from approximately \$121.9 million to \$378.2 million per year.

#### ii. Marine Waters Benefits

In addition to the fresh water benefits captured by the Carson and Mitchell study, EPA anticipates benefits as a result of improvements to marine waters. Sufficient methods have not been developed to quantify national-level benefits for commercial or recreational fishing. EPA used beach closure data and visitation estimates from its Beach Watch Program to estimate potential reductions in marine swimming visits due to storm water runoff contamination events in 1997. The estimated 86,100 trips that did not occur because of beach closures in coastal Phase II communities is a lower bound because it represents only those beaches that report both closures and visitation data. EPA estimates potential swimming benefits from the rule to be at least \$2.1 million annually.

EPA developed an analysis of potential benefits associated with avoided health impacts from exposure to contaminants in storm sewer effluent. Based on a study of incremental illnesses found among people who swam within one yard of storm drains in Santa Monica Bay, EPA estimated a range of incremental illnesses (Haile *et al.*, 1996). Depending on assumptions made about number of exposures to contaminants and contaminant concentrations, benefits ranged from \$7.0 million to \$29.9 million annually.

#### b. Construction Benefits

The major pollutant resulting from construction activities is sediment. However, in addition to sediment, construction activities also yield pollutants such as pesticides, petroleum products, and solvents. Because circumstances will vary considerably from site to site, data is not available with which to develop estimates of benefits for each site and aggregate to obtain a national-level estimate.

In the proposed rule, EPA estimated the combined benefits of all wet weather programs, and then used expert opinions to allocate them to different individual programs. To eliminate the possible overlap between the benefits of the soil and erosion control requirements, municipal measures, and other wet weather storm water programs, EPA chose to use an approach in today's final rule that directly

estimates the benefits of soil and erosion requirements.

A survey of North Carolina residents (Paterson *et al.*, 1993) indicated that households are willing to pay for erosion and sediment controls similar to those in today's rule. Based on income and other indicators, the values derived from the study are expected to be similar to values held in the rest of the country. Using the mean value of the willingness to pay of \$25 per household, EPA projects annual benefits of the soil and erosion requirements to range from \$540.5–\$686 million.

#### c. Summary of Benefits From the National Water Quality Assessment

Total benefits from municipal measures and construction site controls are expected to range from \$671.5 million to \$1.1 billion per year, including benefits of approximately \$13.7 million per year associated with small stream improvements. A summary of the potential benefits is presented in Exhibit 5.

As shown in Exhibit 5, it was not possible to monetize all categories of benefits using the WTP estimates. In particular, benefits for improving marine water quality such as fishing and passive use benefits are not included in the values used to estimate the potential benefits of the municipal minimum measures (excluding construction sites controls), and they are not estimated separately, because information is not currently available.

EXHIBIT 5.—POTENTIAL ANNUAL BENEFITS OF THE PHASE II STORM WATER RULE NATIONAL WATER QUALITY ASSESSMENT ESTIMATE

Benefit category	Annual WTP
<b>Municipal Minimum Measures<sup>1</sup></b>	
Fresh Water Use and Passive Use <sup>2</sup> .....	\$121.9–\$378.2
Marine Recreational Swimming .....	\$2.1
Human Health (Marine Waters) .....	\$7.0–\$29.9
Other Marine Use and Passive Use .....	(+)
<b>Erosion and Sediment Controls for Construction Sites</b>	
Fresh Water and Marine Use and Passive Use <sup>3</sup> .....	\$540.5–\$686
<b>Total Phase II Program</b>	
Total Use & Passive Use (Fresh Water and Marine) .....	>\$671.5–>\$1,096.2

+ = positive benefits expected but not monetized.

<sup>1</sup> Includes water quality benefit of municipal programs, based on 80% effectiveness of municipal programs.

<sup>2</sup> Based on research by Carson and Mitchell (1993). Fresh water value only. Does not include commercial fishery, navigation, or diversionary (e.g. municipal drinking water cost savings or risk reductions) benefits. May not fully capture human health risk reduction or ecological values.

<sup>3</sup> Based on research by Paterson *et al.* (1993). Although the survey's description of the benefits of reducing soil erosion from construction sites included reduced dredging, avoided flooding, and water storage capacity benefits, these benefit categories may not be fully incorporated in the WTP values. Small streams may account for over 2% of total benefits.

#### C. Qualitative Benefits

There are additional benefits to storm water control that cannot be quantified

or monetized. Thus, the current estimate of monetized benefits may understate the true value of storm water controls

because it omits many ways in which society is likely to benefit from reduced storm water pollution, such as improved

aesthetic quality of waters, benefits to wildlife and to threatened and endangered species, cultural values, and biodiversity benefits.

A benefit that EPA did not monetize completely is the flood control benefits attributable to municipal storm water controls reducing downstream flooding, although flood control benefits associated with sediment and erosion control are already reflected to some extent in the construction benefits. Similarly, the Agency could not value the benefits from increased property value due to storm water controls reflected in the rule, even though a commenter suggested inclusion of these benefits in the estimates.

Moreover, while a number of commenters requested that EPA include ecological benefits, the Agency was not able to fully monetize these benefits. Urbanization usually increases the amount of sediment, nutrients, metals and other pollutants associated with land disturbance and development. Development usually not only results in a dramatic increase in the volume of water runoff, but also in a substantial decrease in that water's quality due to stream scour, runoff and dispersion of toxic pollutants, and oversiltation. These kinds of secondary benefits could not be fully reflected in the monetized benefits. EPA was able to only monetize the aquatic life support benefits for waters assumed to be impaired. Thus, only the aquatic life support benefits attributable to municipal controls, reflected through human satisfaction, are taken into account.

Reduced nutrient level is another benefit of the storm water control which is not fully captured by the economic analysis. High nutrient levels often lead to eutrophication of the aquatic system. The quality change in ecological sources as the result of storm water controls to reduce pollutants is not fully reflected in the present benefits.

#### D. National Economic Impact

Finally, the Agency determined that the rule will have minimal impacts on

the economy or employment. This is because the final rule regulates small MS4s and construction sites under 5 acres, not the typical industrial plants or other non-construction activities that could directly impact production and thus those sectors of the economy.

Discussions with representatives within the construction industry indicate that construction costs will likely be passed on to buyers, thus not seriously affecting the housing industry directly. One commenter argued that the rule will have a negative employment effect because the builders will build fewer homes requiring less building materials as a result of the declining demand induced by the cost of the soil and erosion controls. EPA disagrees with this argument because the cost of the controls, as the percentage of the price of a median home, is negligible and will be passed on to final buyers.

Flexibility within the rule allows MS4s to tailor the storm water program requirements to their needs and financial position, minimizing impacts. For sedimentation and erosion controls on construction sites, the rule contemplates application of commonly used BMPs to reduce costs for the construction industry. Thus, the rule attempts to use existing practices to prevent pollution, which should minimize impacts on States, Tribes, municipalities and the construction industry.

Thus, EPA concludes that the effect of the rule, if any, on the national economy will be minimal. The benefits of today's rule more than offset any cost impacts on the national economy.

#### IV. Regulatory Requirements

##### A. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved some of the information collection requirements contained in this final rule (*i.e.* those found in 40 CFR 122.26(g) and 123.35(b)) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040-0211.

The burden and costs described below are for the information collection, reporting, and record keeping requirements for the three year period beginning with the effective date of today's rule. Additional information collection requirements for regulated small MS4s and small construction sites will occur after this initial three year period and will be counted in a subsequent information collection requirement. The total burden of the information collection requirements for the first three years of this rule is estimated at 56,369 hours with a corresponding cost of \$2,151,305 million annually. This burden and cost is for industrial facilities to complete and submit the no exposure certification, for NPDES-authorized States to process and review the no exposure certification, and for the NPDES-authorized States to develop designation criteria and assess additional MS4s outside of urbanized areas. Compliance with the applicable information collection requirements imposed under this rule are mandatory, pursuant to CWA section 402.

Exhibit 6 presents average annual burden and cost estimates for Phase II respondents for the first three years. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust existing ways for complying with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EXHIBIT 6.—AVERAGE ANNUAL BURDEN AND COST ESTIMATES FOR PHASE II RESPONDENTS

Information collection activity	A Respondents per year (projected) <sup>1</sup>	B Burden hours per respondent per year (predicted)	(A)×(B)=C Annual re- spondent bur- den hours (projected)	D Respondent labor cost (\$/ hr) (1998 \$)	(C)×(D)=E Annual Cost (\$) (projected)
Ind. No Expos. Facilities: <sup>2</sup>					
No Expos. Certification .....	36,377	1.0	36,377	44.35	1,613,320
Annual Subtotal .....			36,377		1,613,320
NPDES-Authorized States: <sup>3</sup>					
Designation of Addit. MS4s <sup>4</sup> .....	15	332.8	4,892	26.91	131,644

## EXHIBIT 6.—AVERAGE ANNUAL BURDEN AND COST ESTIMATES FOR PHASE II RESPONDENTS—Continued

Information collection activity	A Respondents per year (projected) <sup>1</sup>	B Burden hours per respondent per year (predicted)	(A)×(B)=C Annual re- spondent bur- den hours (projected)	D Respondent labor cost (\$/ hr) (1998 \$)	(C)×(D)=E Annual Cost (\$) (projected)
No Exp. Cert. Proc. & Rev .....	30,200	0.5	15,100	26.91	406,341
Annual Subtotal .....			19,992		537,985
Annual Totals .....			56,369		2,151,305

**Notes:**

<sup>1</sup>Source: U.S. EPA, Office of Wastewater Management. Economic Analysis for the Storm Water Phase II Rule.

<sup>2</sup>The total number of potential no exposure respondents was divided by 5 to estimate an annual total. It was assumed that the annual number of respondents for the no exposure certification would be spread over the five year period the exclusion applies.

<sup>3</sup>The number of respondents in each category represents only those respondents located within the 44 NPDES-authorized States and Territories. The burden and cost estimates provided in this section are for the NPDES-authorized States in their role as the permitting authority for municipal designations and industrial no exposure.

<sup>4</sup>The number of respondents for this activity, 15, represents the number of NPDES-authorized States and Territories that must develop designation criteria and assess small MS4s located outside of an urbanized area for possible Phase II coverage divided by the three year ICR period.

Given the requirements of today's regulation, EPA believes there will be no capital startup and no operation and maintenance costs associated with information collection requirements of the rule.

The government burden associated with today's rule will impact State, Tribal, and Territorial governments (NPDES-authorized governmental entities) that have storm water program authority, as well as the federal government (*i.e.*, EPA), where it is the NPDES permitting authority. As of March 1999, 43 States and the Virgin Islands had NPDES authority.

The annual burden imposed upon authorized governmental entities (delegated States and the Virgin Islands) and the federal government for the next three years is estimated to be 19,992 hours (\$537,985) and 4,087 hours (\$115,948) respectively, for a total of 24,079 hours (\$653,933). This estimate is based on the average time that governments will expend to carry out the following activities: designate additional MS4s (332.8 hours) and process and review "no exposure" certificates from industrial dischargers (0.5 hour).

Under the existing rule, storm water discharges from light industrial activities identified under § 122.26(b)(14)(xi) were exempted from the permit application requirements if they were not exposed to storm water. Today's rule expands the applicability of the "no exposure" exclusion to include all industrial activity regulated under § 122.26(b)(14) (except category (x), construction). The "no exposure" provision is applied through the use of a written certification process, thus representing a slight reporting burden increase for "light" industries with "no exposure".

In addition to the information collection, reporting, and record keeping burden for the next three years, today's rule contains information collection requirements that will not begin until three years or more from the effective date of today's rule. These information collection requirements were not included in the information collection request approved by OMB. EPA will submit these burden estimates for OMB approval when it submits ICR 2040–0211 to OMB for renewal in three years. The rule burdens for regulated small MS4s and small construction sites that will be included in the ICR renewal fall into three areas: application for an NPDES permit or submittal of waiver information, record keeping of storm water management activities, and submittal of reports to the permitting authority. There will also be an additional burden for the permitting authority to review this information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the first three years of information requirements contained in this final rule.

**B. Executive Order 12866**

Under Executive Order 12866, [58 FR 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant

regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

**C. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a

written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

EPA has determined that today's rule contains a Federal mandate that may result in expenditures of \$100 million or more in any one year for both State, local, and tribal governments, in the aggregate, and the private sector. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized below.

#### 1. Summary of UMRA Section 202 Written Statement

EPA promulgates today's storm water regulation pursuant to the specific mandate of Clean Water Act section 402(p)(6), as well as sections 301, 308, 402, and 501. (33 U.S.C. sections 1342(p)(6), 1311, 1318, 1342, 1361.) Section 402(p)(6) of the CWA requires that EPA designate sources to be regulated to protect water quality and establish a comprehensive program to regulate those sources.

In the *Economic Analysis of the Final Phase II Rule* (EA), EPA describes the qualitative and monetized benefits associated with today's rule and then compares the monetized benefits with the estimated costs for the rule. EPA developed detailed estimates of the costs and benefits of complying with each of the incremental requirements imposed by the rule. These estimates, including descriptions of the methodology and assumptions used, are described in detail in the EA. The Agency used two approaches, a national water quality model and national water quality assessment, to estimate the potential benefits of the rule. Both approaches show that the benefits are likely to exceed costs. Exhibit 3 in section III of this preamble summarizes the costs and benefits associated with the basic elements of today's rule.

There are additional benefits to storm water control that cannot be quantified or monetized. Thus, the current estimate of monetized benefits may understate the true value of storm water controls because it omits many ways by which society is likely to benefit from reduced storm water pollution, such as improved

aesthetic quality of waters, benefits to wildlife and to threatened and endangered species, cultural values, and biodiversity benefits.

Several commenters asserted that today's rule is an unfunded mandate and that, without funding, the monitoring of the already existing pollution control programs would suffer. In section II.D.3 of the preamble, EPA lists some of the programs that EPA anticipates may provide funds to help develop and, in limited circumstances, implement storm water management programs.

In the EA, EPA reviewed the expected effect of today's rule on the national economy. The Agency determined that the rule will have minimal impacts on the economy or employment. This is because the final rule regulates small MS4s and construction sites under 5 acres, not the typical industrial plants or other non-construction activities that could directly impact production and thus those sectors of the economy.

Discussions with representatives within the construction industry indicate that construction costs will likely be passed on to buyers, thus not seriously affecting the housing industry directly. Flexibility within the rule allows MS4s to tailor the storm water program requirements to their needs and financial position, minimizing impacts. For sedimentation and erosion controls on construction sites, the rule contemplates application of commonly used BMPs to reduce costs for the construction industry. Thus, the rule attempts to use existing practices to prevent pollution, which should minimize impacts on States, Tribes, municipalities and the construction industry.

Thus, EPA concludes that the effect of the rule, if any, on the national economy would be minimal. The benefits of today's rule more than offset any cost impacts on the national economy.

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA and Executive Order 12875, "Enhancing the Intergovernmental Partnership," EPA consulted with the governmental entities affected by this rule.

First, EPA provided States, Tribal and local governments with the opportunity to comment on draft alternative approaches for the proposed rule through publishing a notice requesting information and public comment in the **Federal Register** on September 9, 1992 (57 FR 41344). This notice presented a full range of regulatory alternatives. At that time, EPA received more than 130 comments, including approximately 43 percent from municipalities and 24

percent from State or Federal agencies. These comments were the genesis of many of the provisions in the today's rule, including reliance on the NPDES program framework (including general permits), providing State and local governments flexibility in selecting additional sources requiring regulation, and focusing on high priority polluters. These comments helped to focus on pollution prevention, watershed-based concerns and BMPs. They also led to certain exemptions for facilities that do not pollute national waters.

In early 1993, EPA, in conjunction with the Rensselaerville Institute, held public and expert meetings to assist in developing and analyzing options for identifying unregulated storm water sources and possible controls. These meetings provided participants an additional opportunity to provide input into the CWA section 402(p)(6) program development process. The final rule addresses several of the key concerns identified in these groups, including provisions that provide flexibility to the States to select sources to be controlled and types of permits to be issued, and flexibility to MS4s in selecting BMPs.

EPA also conducted outreach with representatives of small entities, including small government representatives, in conjunction with the convening of a Small Business Advocacy Review Panel under SBREFA which is discussed in section IV.E. of the preamble.

In addition, EPA established the Urban Wet Weather Flows Advisory Committee under the Federal Advisory Committee Act (FACA). The Urban Wet Weather Flows Advisory Committee, in turn established the Storm Water Phase II Subcommittee. Consistent with FACA, the membership of the Committee and the Storm Water Phase II Subcommittee was balanced among EPA's various outside stakeholder interests, including representatives from State governments, municipal governments (both elected officials and appointed officials) and Tribal governments, as well as industrial and commercial sectors, agriculture, environmental and public interest groups.

In general, municipal and Tribal government representatives supported the NPDES approach in today's rule for the following reasons: It will be uniformly applied on a nationwide basis; it provides flexibility to allow incorporation of State and local programs; it resolves the problem of donut holes that cause water quality impacts in urbanized areas; and it allows co-permitting of small regulated

MS4s with those regulated under the existing storm water program.

In contrast, State representatives sought alternative approaches for State implementation of the storm water program for Phase II sources. State representatives asserted that a non-NPDES alternative approach best facilitated watershed management and avoided duplication and overlapping regulations. These representatives pointed out that there are a variety of State programs—not based on the CWA—implementing effective storm water controls, and that EPA should provide incentives for their implementation and improvement in performance. EPA continues to believe that an NPDES approach is the best approach in order to adequately protect water quality. However, EPA has worked with States on an alternative approach that provides flexibility within the NPDES framework. The final rule allows States with a watershed permitting approach to phase in permit coverage for MS4s in jurisdictions with a population less than 10,000 and provides two waivers from coverage for small MS4s. This issue is discussed in section II.C of the preamble, Program Framework: NPDES Approach.

Some municipal governments objected that the rule's minimum measures for small MS4s violate the Tenth Amendment insofar as they require the operators of MS4s to regulate third parties according to the "minimum measures" for municipal storm water management programs. EPA disagrees that today's rule is inconsistent with Tenth Amendment principles. Permits issued under today's rule will not compel political subdivisions of States to regulate in their sovereign capacities, but rather to effectively control discharges out of their storm sewer systems in their owner/operator capacities. For MS4s that do not accept this "default" minimum measures-based approach (to control discharges out of the storm sewer system by exercising local powers to control discharges into the storm sewer system), today's rule allows for alternative permits through individual permit applications. EPA made revisions to the rule to allow regulated small MS4s to opt out of the minimum measures approach and instead apply for an individual permit. This issue is discussed in section II.H.3.c.iii of the preamble, Alternative Permit Option/ Tenth Amendment.

## 2. Selection of the Least Costly, Most Cost-Effective or Least Burdensome Alternative That Achieves the Objectives of the Statute

Today's rule evolved over time and incorporated aspects of alternatives that responded to concerns presented by the various stakeholders. A primary characteristic of today's rule is the flexibility it offers both the permitting authority and the regulated sources (small MS4s and small construction sites), by the use of general permits, implementation of BMPs suited to specific locations, and allowing MS4s to develop their own program goals.

In the administrative record supporting the proposed rule, EPA estimated ranges of costs associated with six different options, including a no action option, the proposed option, and four other options that considered various combinations of the following: Covering all the unregulated construction sites below 5 acres, all small MS4s, certain industrial and commercial activities, and all point sources. EPA developed detailed cost estimates for the incremental requirements imposed under the final regulation, and for each of the alternatives, and applied these estimates to the remaining unregulated point sources of storm water. The Agency compared the estimated annual range of costs imposed under today's rule and other major options considered. The range of values for each option included the costs for compliance, including paperwork requirements for the operators of small construction sites, industrial facilities, and MS4s and administrative costs for State and Federal NPDES permitting authorities.

Today's rule reflects the least costly option that achieves the objectives of the statute, thus meeting the requirements of section 205. EPA did not consider "no regulation" to be an "option" because it would not achieve the objectives of CWA section 402(p)(6). A portion of currently unregulated point sources of storm water need to reduce pollutants to protect water quality.

Today's rule is estimated to range in cost from \$847.6 million to \$981.3 million annually, although the cost estimate for the proposed rule was reported as a range of \$138 to \$869 million annually. That range reflected a unit cost range for the municipal minimum measures and a cost range per construction site for soil erosion control. EPA has since revised its cost analysis to allow it to report the current estimate, which is toward the high end of the original cost range. The four other regulatory options considered at

proposal involved higher regulatory costs and, therefore, were not selected. These four options and their estimated costs are as follows:

(1) An option based on the August 7, 1995 direct final rule was estimated to cost between \$2.2 billion and \$78.9 billion per year.

(2) A "Plan B" option was estimated to cost between \$0.6 billion and \$3.2 billion per year.

(3) An option based on the September 30, 1996 draft proposed rule was estimated to cost between \$0.2 billion and \$3.7 billion per year.

(4) An option based on the February 13, 1997 draft proposed rule, was estimated to cost between \$0.2 billion and \$3.5 billion.

There are three reasons why the costs for these four options exceeded the estimated cost range for the proposed rule. The first two options regulated substantially more municipal governments. The first, third, and fourth options required industrial facilities to apply for permits. Finally, the first three options applied permit requirements to construction sites below 1 acre. Consequently, these options would be more costly than today's rule even with the revised analysis methods used to estimate costs.

## 3. Effects on Small Governments

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although today's rule expands the NPDES program (with modifications) to certain MS4s serving populations below 100,000 and although many MS4s are owned by small governments, EPA does not believe today's rule significantly or uniquely affects small governments. As explained in section IV.E. of the preamble, EPA today certifies that the rule will not have a significant impact on small governmental jurisdictions. In addition, the rule will not have a unique impact on small governments because the rule will affect small governments in

to the same extent as (or to a lesser extent than) larger governments that are already covered by the existing storm water rules. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

Notwithstanding this finding, in developing today's rule, EPA provided notice of the requirements to potentially affected small governments; enabled officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals; and informed, educated and advised small governments on compliance with the requirements.

Concerning notice, EPA provided States, local, and Tribal governments with the opportunity to comment on alternative approaches for an early draft of the proposed rule by publishing a notice requesting information and public comment in the **Federal Register** on September 9, 1992 (57 FR 41344). This notice presented a full range of regulatory alternatives. At that time, EPA received more than 130 comments, including approximately 43 percent from municipalities and 24 percent from State or Federal agencies.

The Agency also provided, through the SBREFA panel process and the FACA process, the opportunity for elected officials of small governments (and their representatives) to meaningfully participate in the development of the rule. Through such participation and exchange, EPA not only notified potentially affected small governments of requirements of the developing rule, but also allowed officials of affected small governments to have meaningful and timely input into the development of regulatory proposals.

In addition to involving municipalities in the development of the rule, EPA also continues to inform, educate, and advise small governments on compliance with the requirements of today's rule. For example, EPA supported 10 workshops, presented by the American Public Works Association from September 1998 through May 1999, designed to educate local governments on the implementation of the rule. The workshop curriculum included information on a variety of key issues such as anticipated regulatory requirements, agency reporting, best management practices, construction site controls, post construction management for new and redeveloped sites, public education and public involvement strategies, detection and control of illicit discharges, and good housekeeping practices. Moreover, EPA has prepared a series of fact sheets, available on the

EPA website at [www.epa.gov/owm/sw/toolbox](http://www.epa.gov/owm/sw/toolbox), that explains the rule in detail.

Finally, to assist small governments in implementing the Phase II program, EPA is committed to the following: (1) developing a tool box of implementation strategies; (2) providing written technical assistance, including guidance on developing BMPs and measurable goals; and (3) compiling a comprehensive evaluation of the NPDES municipal storm water Phase II program over the next 13 years.

#### *D. Executive Order 13132*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. For final rules subject to Executive Order 13132, EPA also must submit to OMB a statement from the agency's Federalism Official certifying that EPA has fulfilled the Executive Order's requirements.

EPA has concluded that this final rule may have federalism implications. As discussed above in section IV.C., the rule contains a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, of \$100 million or more in any one year. Accordingly, the rule may have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Moreover, the rule will impose substantial direct compliance costs on State or local governments. Accordingly, EPA provides the following FSIS under section 6(b) of Executive Order 13132.

#### *1. Description of the Extent of the Agency's Prior Consultation with State and Local Governments*

Although this rule was proposed long before the November 2, 1999 effective date of Executive Order 13132, EPA consulted extensively with affected State and local governments pursuant to the intergovernmental consultation provisions of Executive Order 12875, "Enhancing the Intergovernmental Partnership" (now revoked by Executive Order 13132) and section 204 of UMRA.

First, EPA provided State and local governments the opportunity to comment on draft alternative approaches for the proposed rule through publishing a notice requesting information and public comment in the **Federal Register** on September 9, 1992 (57 FR 41344). This notice presented a full range of regulatory alternatives. At that time, EPA received more than 130 comments, including approximately 43 percent from municipalities and 24 percent from State or Federal agencies. These comments were the genesis of many of the provisions in the today's rule, including reliance on the NPDES program framework (including general permits), providing State and local governments flexibility in selecting additional sources requiring regulation, and focusing on high priority polluters. These comments helped to focus on pollution prevention, watershed-based concerns and BMPs. They also led to certain exemptions for facilities that do not pollute national waters.

In early 1993, EPA, in conjunction with the Rensselaerville Institute, held public and expert meetings to assist in developing and analyzing options for identifying unregulated storm water sources and possible controls. These meetings provided participants an additional opportunity to provide input into the CWA section 402(p)(6) program



development process. The final rule addresses several of the key concerns identified in these groups, including provisions that provide flexibility to the States to select sources to be controlled and types of permits to be issued, and flexibility to MS4s in selecting BMPs.

EPA also conducted outreach with representatives of small entities, including small governments, in conjunction with the convening of a Small Business Advocacy Review Panel under SBREFA which is discussed in section III.F. of the preamble.

In addition, EPA established the Urban Wet Weather Flows Advisory Committee (FACA), which in turn established the Storm Water Phase II Subcommittee. Consistent with the Federal Advisory Committee Act, the membership of the Committee and the Storm Water Phase II Subcommittee was balanced among EPA's various outside stakeholder interests, including representatives from State governments, municipal governments (both elected officials and appointed officials) and Tribal governments, as well as industrial and commercial sectors, agriculture, environmental and public interest groups.

## 2. Summary of Nature of State and Local Government Concerns, and Statement of the Extent to Which Those Concerns Have Been Met

In general, municipal government representatives supported the NPDES approach in today's rule for the following reasons: it will be uniformly applied on a nationwide basis; it provides flexibility to allow incorporation of State and local programs; it resolves the problem of donut holes that cause water quality impacts in urbanized areas; and it allows co-permitting of small regulated MS4s with those regulated under the existing storm water program.

In contrast, State representatives sought alternative approaches for State implementation of the storm water program for Phase II sources. State representatives asserted that a non-NPDES alternative approach best facilitated watershed management and avoided duplication and overlapping regulations. These representatives pointed out that there are a variety of State programs—not based on the CWA—implementing effective storm water controls, and that EPA should provide incentives for their implementation and improvement in performance. EPA continues to believe that an NPDES approach is the best approach in order to adequately protect water quality. However, EPA has worked with States on an alternative

approach that provides flexibility within the NPDES framework. The final rule allows States with a watershed permitting approach to phase in permit coverage for MS4s in jurisdictions with a population less than 10,000 and provides two waivers from coverage for small MS4s. This issue is discussed in section II.C of the preamble, Program Framework: NPDES Approach.

Some municipal governments objected that the rule's minimum measures for small MS4s violate the Tenth Amendment insofar as they require the operators of MS4s to regulate third parties according to the "minimum measures" for municipal storm water management programs. EPA disagrees that today's rule is inconsistent with Tenth Amendment principles. Permits issued under today's rule will not compel political subdivisions of States to regulate in their sovereign capacities, but rather to effectively control discharges out of their storm sewer systems in their owner/operator capacities. For MS4s that do not accept this "default" minimum measures-based approach (to control discharges out of the storm sewer system by exercising local powers to control discharges into the storm sewer system), today's rule allows for alternative permits through individual permit applications. EPA made revisions to the rule to allow regulated small MS4s to opt out of the minimum measures approach and instead apply for an individual permit. This issue is discussed in section II.H.3.c.iii of the preamble, Alternative Permit Option/Tenth Amendment.

## 3. Summary of the Agency's Position Supporting the Need To Issue the Regulation

As discussed more fully in section I.B. above, today's rule is needed because uncontrolled storm water discharges from areas of urban development and construction activity have been shown to have negative impacts on receiving waters by changing the physical, biological, and chemical composition of the water, resulting in an unhealthy environment for aquatic organisms, wildlife, and people. As discussed in section II.C., the NPDES approach in today's rule is needed to ensure uniform application on a nationwide basis, to provide flexibility to allow incorporation of State and local programs, to resolve the problem of donut holes that cause water quality impacts in urbanized areas, and to allow co-permitting of small regulated MS4s with those regulated under the existing storm water program.

The draft final rule was transmitted to OMB on July 6, 1999. Because transmittal occurred before the November 2, 1999 effective date of Executive Order 13132, certification under section 8 of the Executive Order is not required.

*E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) a building contractor (SIC 15) with up to \$17.0 million in annual revenue; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

For purposes of evaluating the economic impact of this rule on small governmental jurisdictions, EPA compared annual compliance costs with annual government revenues obtained from the 1992 Census of Governments, using state-specific estimates of annual revenue per capita for municipalities in three population size categories (fewer than 10,000, 10,000–25,000, and 25,000–50,000).

In order to estimate the annual compliance cost for small governmental jurisdictions, EPA used the mean variable municipal cost of \$8.93 per household as calculated in a 1998 study of 121 municipalities conducted by the national Association of Flood and Stormwater Management Agencies (NAFSMA). In addition, EPA used the estimated fixed administrative costs of \$1,545 per municipality for reporting,

recordkeeping, and application requirements for today's rule.

In evaluating the economic impact of this rule on small governmental jurisdictions, EPA determined that compliance costs represent more than 1 percent of estimated revenues for only 10 percent of small governments and more than 3 percent of the revenue for 0.7 percent of these entities. In both absolute and relative terms, EPA does not consider this a significant economic impact on a substantial number of small entities.

EPA normally uses the "sales test" for determining the economic impact on small businesses. Under a sales test, annual compliance costs are compared with the small business's total annual sales. However, the direct application of the sales test is not suitable in this case, because of the uncertainty associated with estimating the number of units an "average" developer/contractor develops or builds in a typical year. For this rule, EPA has approximated the sales test by estimating compliance costs for three sizes of construction sites and comparing them with a representative sale price for three building categories. Although EPA's analysis is not exactly a "sales test," it is similar to the sales test, producing comparable results.

For small building contractors, EPA estimated administrative compliance costs of \$870 per site for applying for coverage, reporting, record keeping, monitoring and preparing a storm water pollution prevention plan. EPA estimated compliance costs for installing soil and erosion controls as ranging from \$1,206 to \$8,709 per site. EPA compliance cost estimates are based on 27 theoretical model construction sites designed to mimic the mostly likely used best management practices around the country.

In evaluating the economic impact on small building contractors, EPA divided the revised compliance costs per construction start by the appropriate homes-to-site ratio for each of the three sizes of construction sites. The average compliance cost per home ranges from approximately \$450 to \$650. EPA concluded that compliance costs are roughly 0.22 to 0.43 percent of both the mean, \$181,300, and median, \$151,000, sale price of a home.

The absence of data to specifically assess annual compliance costs for building contractors as a percentage of annual sales (i.e., a very direct estimate of the impact on potentially affected small businesses) led EPA to perform additional market analysis to examine the ability of potentially affected firms to pass along regulatory costs to buyers

for single-family homes constructed subject to today's rule. If the small building contractors covered by the rule are able to pass on the costs of compliance, either completely or partially, to their purchasers, then the rule's impact on these small business entities is significantly reduced. The market analysis shows that demand for homes is not overly sensitive to small changes in price, therefore builders should be able to pass on at least a significant fraction of the compliance costs to buyers.

EPA also assessed the effect of the building contractors' costs on average monthly mortgage rates and on the demand for new homes. Based on that screening analysis, EPA concludes that the costs to building contractors, and the potential changes in housing prices and monthly mortgage payments for single-family home buyers, are not expected to have a significant impact on the market for single-family houses. In both absolute and relative terms, EPA does not consider this a significant economic impact on a substantial number of small entities.

EPA also certified this rule at proposal. Even though the Agency was not required to, we convened a Small Business Advocacy Review Panel ("Panel") in June 1997. A number of small entity representatives had already been actively involved with EPA through the FACA process, and were, therefore, broadly knowledgeable about the development of the proposed and final rules. Prior to convening the Panel, EPA consulted with the Small Business Administration to identify a group of small entity representatives to advise the Panel. The Agency distributed a briefing package describing its preliminary analysis under the RFA to the small entity representatives (as well as to representatives from OMB and SBA) and conducted two telephone conference calls and an all-day meeting at EPA Headquarters in May of 1997 with small entity representatives. With this preliminary work complete, in June 1997, EPA formally convened the SBREFA Panel, comprising representatives from OMB, SBA, EPA's Office of Water and EPA's Small Business Advocacy Chair. The Panel received written comments from small entity representatives based on their involvement in the earlier meetings, and invited additional comments.

Consistent with requirements of the RFA, the Panel evaluated the assembled materials and small-entity comments on issues related to: (1) a description and the number of small entities that would be regulated; (2) a description of the projected record keeping, reporting and

other compliance requirements applicable to small entities; (3) identification of other Federal rules that may duplicate, overlap, or conflict with the proposal to the final rule; and (4) regulatory alternatives that would minimize any significant economic impact of the rule on small entities while accomplishing the stated objectives of the CWA section 402(p)(6).

On August 7, 1997, the Panel provided a Final Report (hereinafter, "Report") to the EPA Administrator. A copy of the Report is included in the docket for the rule. The Panel acknowledged and commended EPA's efforts to work with stakeholders, including small entities, through the FACA process. The SBREFA Panel stated that, because of EPA's extensive outreach and responsiveness in addressing stakeholder concerns, commenters during the SBREFA process raised fewer concerns than might otherwise have been expected. Based on the advice and recommendations of the Panel, today's rule includes a number of provisions designed to minimize any significant impact on small entities. (See Appendix 5).

#### *F. National Technology Transfer And Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not mandate the use of any particular technical standards, although in designing appropriate BMPs regulated small MS4s and small construction sites are encouraged to use any voluntary consensus standards that may be applicable and appropriate. Because no specific technical standards are included in the rule, section 12(d) of the NTTAA is not applicable.

#### *G. Executive Order 13045*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically

significant” as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it does not concern an environmental health or safety risk that may have a disproportionate effect on children. The rule expands the scope of the existing NPDES permitting program to require small municipalities and small construction sites to regulate their storm water discharges. The rule does not itself, however, establish standards or criteria that would be included in permits for those sources. Such standards or criteria will be developed through other actions, for example, in the establishment of water quality standards or subsequently in the issuance of permits themselves. As such, today’s action does not concern an environmental health or safety risk that may have a disproportionate effect on children. To the extent it does address a risk that may have a disproportionate effect on children, expanding the scope of the permitting program will have a corresponding disproportionate benefit to protect them from such risk.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal

governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA’s prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

Today’s rule does not significantly or uniquely affect the communities of Indian Tribal governments. Even though the Agency is not required to address Tribes under the Regulatory Flexibility Act, EPA used the same revenue test that was used for municipalities to assess the impact of the rule on communities of Tribal governments and determine that they will not be significantly affected. In addition, the rule will not have a unique impact on the communities of Tribal governments because small municipal governments are also covered by this rule and larger municipal governments are already covered by the existing storm water rules. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress

and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective on February 7, 2000.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Hazardous materials, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Penalties.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: October 29, 1999.

Carol M. Browner,  
Administrator.

Appendices to the Preamble

APPENDIX 1 TO PREAMBLE—FEDERALLY-RECOGNIZED AMERICAN INDIAN AREAS LOCATED FULLY OR PARTIALLY IN BUREAU OF THE CENSUS URBANIZED AREAS  
[Based on 1990 Census data]

State	American Indian Area	Urbanized Area
AZ .....	Pascua Yacqui Reservation (pt.): Pascua Yacqui Tribe of Arizona .....	Tucson, AZ (Phase I).
AZ .....	Salt River Reservation (pt.): Salt River Pima-Maricopa Indian Community of the Salt River Reservation, California.	Phoenix, AZ (Phase I).
AZ .....	San Xavier Reservation (pt.): Tohono O’odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend & San Xavier Reservation).	Tucson, AZ (Phase I).
CA .....	Augustine Reservation: Augustine Band of Cahuilla Mission of Indians of the Augustine Reservation, CA.	Indio-Coachella, CA (Phase I).
CA .....	Cabazon Reservation: Cabazon Band of Cahuilla Mission Indians of the Cabazon Res- ervation, CA.	Indio-Coachella, CA (Phase I).

## APPENDIX 1 TO PREAMBLE—FEDERALLY-RECOGNIZED AMERICAN INDIAN AREAS LOCATED FULLY OR PARTIALLY IN BUREAU OF THE CENSUS URBANIZED AREAS—Continued

[Based on 1990 Census data]

State	American Indian Area	Urbanized Area
CA .....	Fort Yuma (Quechan) (pt.): Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona.	Yuma, AZ-CA.
CA .....	Redding Rancheria: Redding Rancheria of California .....	Redding, CA.
FL .....	Hollywood Reservation: Seminole Tribe .....	Fort Lauderdale, FL (Phase I).
FL .....	Seminole Trust Lands: Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations.	Fort Lauderdale, FL (Phase I).
ID .....	Fort Hall Reservation and Trust Lands: Shosone-Bannock Tribes of the Fort Hall Reservation of Idaho.	Pocatello, ID.
ME .....	Penobscot Reservation and Trust Lands (pt.): Penobscot Tribe of Maine .....	Bangor, ME.
MN .....	Shakopee Community: Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake).	Minneapolis-St. Paul, MN (Phase I).
NM .....	Sandia Pueblo (pt.): Pueblo of Sandia, New Mexico .....	Albuquerque, NM (Phase I).
NV .....	Las Vegas Colony: Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada.	Las Vegas, NV (Phase I).
NV .....	Reno-Sparks Colony: Reno-Sparks Indian Colony, Nevada .....	Reno, NV (Phase I).
OK .....	Osage Reservation (pt.): Osage Nation of Oklahoma .....	Tulsa, OK (Phase I).
OK .....	Absentee Shawnee-Citizens Band of Potawatomi TJSAs (pt.): Absentee-Shawnee Tribe of Indians of Oklahoma; Citizen Potawatomi Nation, Oklahoma.	Oklahoma City, OK (Phase I).
OK .....	Cherokee TJSAs (pt.): Cherokee Nation of Oklahoma; United Keetoowah Band of Cherokee Indians of Oklahoma.	Ft. Smith, AR-OK; Tulsa, OK (Phase I).
OK .....	Cheyenne-Arapaho TJSAs (pt.): Cheyenne-Arapaho Tribes of Oklahoma .....	Oklahoma City, OK (Phase I).
OK .....	Choctaw TJSAs (pt.): Choctaw Nation of Oklahoma .....	Ft. Smith, AR-OK (Phase I).
OK .....	Creek TJSAs (pt.): Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma; Kialegee Tribal Town of the Creek Indian Nation of Oklahoma; Muscogee (Creek) Nation of Oklahoma; Thlopthlocco Tribal Town of the Creek Nation of Oklahoma.	Tulsa, OK (Phase I).
OK .....	Kiowa-Comanche-Apache-Ft. Sill Apache: Apache Tribe of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma.	Lawton, OK.
TX .....	Ysleta del Sur Reservation: Ysleta Del Sur Pueblo of Texas .....	El Paso, TX-NM (Phase I).
WA .....	Muckleshoot Reservation and Trust Lands (pt.): Muckleshoot Indian Tribe of the Muckleshoot Reservation.	Seattle, WA (Phase I).
WA .....	Puyallup Reservation and Trust Lands (pt.): Puyallup Tribe of the Puyallup Reservation, WA.	Tacoma, WA (Phase I).
WA .....	Yakima Reservation (pt.): Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, WA.	Yakima, WA.
WI .....	Oneida (West) (pt.): Oneida Tribe of Wisconsin .....	Green Bay, WI.

## Please Note

“(pt.)” indicates that the American Indian Area (AIA) listed is only partially located within the referenced urbanized area.

The first line under “American Indian Area” is the name of the federally-recognized reservation/colony/rancheria or trust land as it appears in the Bureau of the Census data. After this first line, the names of the tribes included in the AIA are listed as they appear in the Bureau of Indian Affairs’ list of Federally Recognized Indian Tribes. [Federal

Register: Nov. 13, 1996, Vol. 66, No. 220, pgs. 58211–58216]

“TJSAs” are Tribal Jurisdiction Statistical Areas in Oklahoma that are defined in conjunction with the federally-recognized tribes in Oklahoma who have definite land areas under their jurisdiction, but do not have reservation status.

“(Phase I)” indicates that the referenced urbanized area includes a medium or large MS4 currently regulated under the existing NPDES storm water program (i.e., Phase I). Any Tribally operated MS4 within these such

urban areas would not automatically have been covered under Phase I, however.

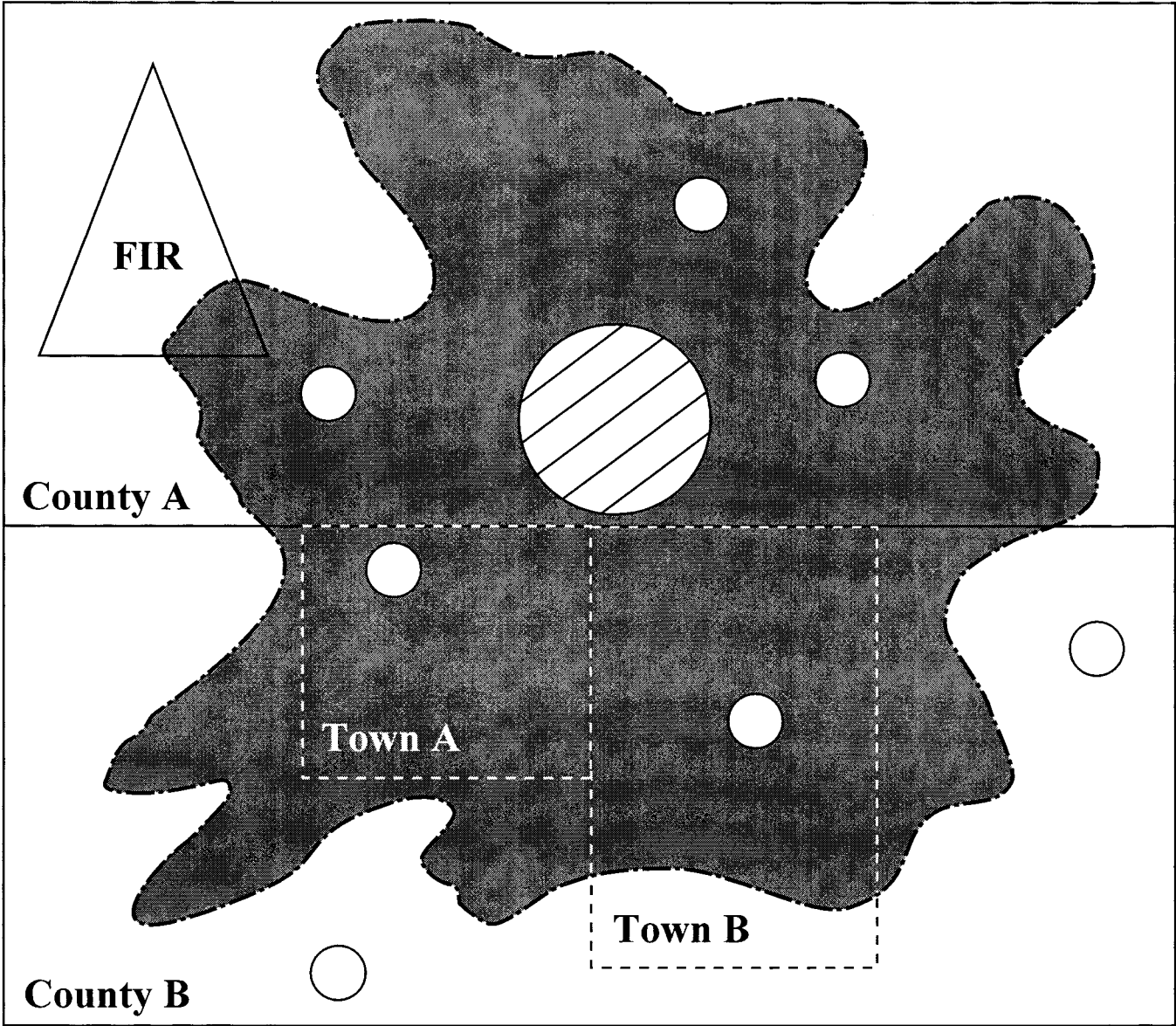
## Sources

Michael Ratcliffe, Geographic Concepts Division, Bureau of the Census, U.S. Department of Commerce.

1990 Census of Population and Housing, Summary Population and Housing Characteristics, United States. Tables 9 & 10. [1990 CPH-1-1]. Bureau of the Census, U.S. Department of Commerce.

BILLING CODE 6560-50-P

APPENDIX 2 TO PREAMBLE—URBANIZED AREA ILLUSTRATION



2111D



Central Place



Incorporated Place



Federal Indian Reservation (FIR)



Unincorporated "Urbanized Area" Portion of a Town (MCD) or County



Urbanized Area



Town or Township as a functioning Minor Civil Division (MCD). An MCD is the primary subdivision of a County.



County

### Appendix 3 to the Preamble— Urbanized Areas of the United States and Puerto Rico

(Source: 1990 Census of Population and Housing, U.S. Bureau of the Census—This list is subject to change with the Decennial Census)

#### Alabama

Anniston  
Auburn-Opelika  
Birmingham  
Columbus, GA-AL  
Decatur  
Dothan  
Florence  
Gadsden  
Huntsville  
Mobile  
Montgomery  
Tuscaloosa

#### Alaska

Anchorage

#### Arizona

Phoenix  
Tucson  
Yuma, AZ-CA

#### Arkansas

Fayetteville-Springdale  
Fort Smith, AR-OK  
Little Rock-North Little Rock  
Memphis, TN-AR-MS  
Pine Bluff  
Texarkana, AR-TX

#### California

Antioch-Pittsburgh  
Bakersfield  
Chico  
Davis  
Fairfield  
Fresno  
Hemet-San Jacinto  
Hesperia-Apple Valley-Victorville  
Indio-Coachella  
Lancaster-Palmdale  
Lodi  
Lompoc  
Los Angeles  
Merced  
Modesto  
Napa  
Oxnard-Ventura  
Palm Springs  
Redding  
Riverside-San Bernardino  
Sacramento  
Salinas  
San Diego  
San Francisco-Oakland  
San Jose  
San Luis Obispo  
Santa Barbara  
Santa Cruz  
Santa Maria  
Santa Rosa  
Seaside-Monterey  
Simi Valley  
Stockton  
Vacaville  
Visalia  
Watsonville

Yuba City  
Yuma

#### Colorado

Boulder  
Colorado Springs  
Denver  
Fort Collins  
Grand Junction  
Greeley  
Longmont  
Pueblo

#### Connecticut

Bridgeport-Milford  
Bristol  
Danbury, CT-NY  
Hartford-Middletown  
New Britain  
New Haven-Meriden  
New London-Norwich  
Norwalk  
Springfield, MA-CT  
Stamford, CT-NY  
Waterbury  
Worcester, MA-CT

#### Delaware

Dover  
Wilmington, DE-NJ-MD-PA

#### District of Columbia

Washington, DC-MD-VA

#### Florida

Daytona Beach  
Deltona  
Fort Lauderdale-Hollywood-Pompano Beach  
Fort Myers-Cape Coral  
Fort Pierce  
Fort Walton Beach  
Gainesville  
Jacksonville  
Kissimmee  
Lakeland  
Melbourne-Palm Bay  
Miami-Hialeah  
Naples  
Ocala  
Orlando  
Panama City  
Pensacola  
Punta Gorda  
Sarasota-Bradenton  
Spring Hill  
Stuart  
Tallahassee  
Tampa-St. Petersburg-Clearwater  
Titusville  
Vero Beach  
West Palm Beach-Boca Raton-Delray Beach  
Winter Haven

#### Georgia

Albany  
Athens  
Atlanta  
Augusta  
Brunswick  
Chattanooga  
Columbus  
Macon  
Rome  
Savannah  
Warner Robins

#### Hawaii

Honolulu

Kailua

#### Idaho

Boise City  
Idaho Falls  
Pocatello

#### Illinois

Alton  
Aurora  
Beloit, WI-IL  
Bloomington-Normal  
Champaign-Urbana  
Chicago, IL-Northwestern IN  
Crystal Lake  
Davenport-Rock Island-Moline, IA-IL  
Decatur  
Dubuque  
Elgin  
Joliet  
Kankakee  
Peoria  
Rockford  
Round Lake Beach-McHenry, IL-WI  
St. Louis, MO-IL  
Springfield

#### Indiana

Anderson  
Bloomington  
Chicago, IL-Northwestern IN  
Elkhart-Goshen  
Evansville, IN-KY  
Fort Wayne  
Indianapolis  
Kokomo  
Lafayette-West Lafayette  
Louisville, KY-IN  
Muncie  
South Bend-Mishawaka, IN-MI  
Terre Haute

#### Iowa

Cedar Rapids  
Davenport-Rock Island-Moline, IA-IL  
Des Moines  
Dubuque, IA-IL-WI  
Iowa City  
Omaha, NE-IA  
Sioux City, IA-NE-SD  
Waterloo-Cedar Falls

#### Kansas

Kansas City, MO-KS  
Lawrence  
St. Joseph, MO-KS  
Topeka  
Wichita

#### Kentucky

Cincinnati, OH-KY  
Clarksville, TN-KY  
Evansville, IN-KY  
Huntington-Ashland, WV-KY-OH  
Lexington-Fayette  
Louisville, KY-IN  
Owensboro

#### Louisiana

Alexandria  
Baton Rouge  
Houma  
Lafayette  
Lake Charles  
Monroe  
New Orleans  
Shreveport

## Slidell

**Maine**

Bangor  
Lewiston-Auburn  
Portland  
Portsmouth-Dover-Rochester, NH-ME

**Maryland**

Annapolis  
Baltimore  
Cumberland  
Frederick  
Hagerstown, MD-PA-WV  
Washington, DC-MD-VA  
Wilmington, DE-NJ-MD-PA

**Massachusetts**

Boston  
Brockton  
Fall River, MA-RI  
Fitchburg-Leominster  
Hyannis  
Lawrence-Haverhill, MA-NH  
Lowell, MA-NH  
New Bedford  
Pittsfield  
Providence-Pawtucket, RI-MA  
Springfield, MA-CT  
Taunton  
Worcester, MA-CT

**Michigan**

Ann Arbor  
Battle Creek  
Bay City  
Benton Harbor  
Detroit  
Flint  
Grand Rapids  
Holland  
Jackson  
Kalamazoo  
Lansing-East Lansing  
Muskegon  
Port Huron  
Saginaw  
South Bend-Mishawaka, IN-MI  
Toledo, OH-MI

**Minnesota**

Duluth, MN-WI  
Fargo-Moorhead, ND-MN  
Grand Forks, ND-MN  
La Crosse, WI-MN  
Minneapolis-St. Paul  
Rochester  
St. Cloud

**Mississippi**

Biloxi-Gulfport  
Hattiesburg  
Jackson  
Memphis, TN-AR-MS  
Pascagoula

**Missouri**

Columbia  
Joplin  
Kansas City, MO-KS  
St. Joseph, MO-KS  
St. Louis, MO-IL  
Springfield

**Montana**

Billings  
Great Falls

## Missoula

**Nebraska**

Lincoln  
Omaha, NE-IA  
Sioux City, IA-NE-SD

**Nevada**

Las Vegas  
Reno

**New Hampshire**

Lawrence-Haverhill, MA-NH  
Lowell, MA-NH  
Manchester  
Nashua  
Portsmouth-Dover-Rochester, NH-ME

**New Jersey**

Allentown-Bethlehem-Easton, PA-NJ  
Atlantic City  
New York, NY-Northeastern NJ  
Philadelphia, PA-NJ  
Trenton, NJ-PA  
Vineland-Millville  
Wilmington, DE-NJ-MD-PA

**New Mexico**

Albuquerque  
El Paso  
Las Cruces  
Santa Fe

**New York**

Albany-Schenectady-Troy  
Binghamton  
Buffalo-Niagara Falls  
Danbury, CT-NY  
Elmira  
Glens Falls  
Ithaca  
Newburgh  
New York, NY-Northeastern NJ  
Poughkeepsie  
Rochester  
Stamford, CT-NY  
Syracuse  
Utica-Rome

**North Carolina**

Asheville  
Burlington  
Charlotte  
Durham  
Fayetteville  
Gastonia  
Goldsboro  
Greensboro  
Greenville  
Hickory  
High Point  
Jacksonville  
Kannapolis  
Raleigh  
Rocky Mount  
Wilmington  
Winston-Salem

**North Dakota**

Bismark  
Fargo-Moorhead, ND-MN  
Grand Forks, ND-MN

**Ohio**

Akron  
Canton  
Cincinnati, OH-KY

## Cleveland

Columbus  
Dayton  
Hamilton  
Huntington-Ashland, WV-KY-OH  
Lima  
Lorain-Elyria  
Mansfield  
Middletown  
Newark  
Parkersburg, WV-OH  
Sharon, PA-OH  
Springfield  
Steubenville-Weirton, OH-WV-PA  
Toledo, OH-MI  
Wheeling, WV-OH  
Youngstown-Warren

**Oklahoma**

Fort Smith, AR-OK  
Lawton  
Oklahoma City  
Tulsa

**Oregon**

Eugene-Springfield  
Longview  
Medford  
Portland-Vancouver, OR-WA  
Salem

**Pennsylvania**

Allentown-Bethlehem-Easton, PA-NJ  
Altoona  
Erie  
Hagerstown, MD-PA-WV  
Harrisburg  
Johnstown  
Lancaster  
Monessen  
Philadelphia, PA-NJ  
Pittsburgh  
Pottstown  
Reading  
Scranton-Wilkes-Barre  
Sharon, PA-OH  
State College  
Steubenville-Weirton, OH-WV-PA  
Trenton, NJ-PA  
Williamsport  
Wilmington, DE-NJ-MD-PA  
York

**Rhode Island**

Fall River, MA-RI  
Newport  
Providence-Pawtucket, RI-MA

**South Carolina**

Anderson  
Augusta, GA-SC  
Charleston  
Columbia  
Florence  
Greenville  
Myrtle Beach  
Rock Hill  
Spartanburg  
Sumter

**South Dakota**

Rapid City  
Sioux City, IA-NE-SD  
Sioux Falls

**Tennessee**

Bristol, TN-Bristol, VA



Chattanooga, TN-GA  
Clarksville, TN-KY  
Jackson  
Johnson City  
Kingsport, TN-VA  
Knoxville  
Memphis, TN-AR-MS  
Nashville

**Texas**

Abilene  
Amarillo  
Austin  
Beaumont  
Brownsville  
Bryan-College Station  
Corpus Christi  
Dallas-Fort Worth  
Denton  
El Paso, TX-NM  
Galveston  
Harlingen  
Houston  
Killeen  
Laredo  
Lewisville  
Longview  
Lubbock  
McAllen-Edinburg-Mission  
Midland  
Odessa  
Port Arthur  
San Angelo  
San Antonio  
Sherman-Denison  
Temple  
Texarkana, TX-Texarkana, AR  
Texas City  
Tyler  
Victoria

Waco  
Wichita Falls

**Utah**

Logan  
Ogden  
Provo-Orem  
Salt Lake City

**Vermont**

Burlington

**Virginia**

Bristol, TN-Bristol, VA  
Charlottesville  
Danville  
Fredericksburg  
Kingsport, TN-VA  
Lynchburg  
Norfolk-Virginia Beach-Newport News  
Petersburg  
Richmond  
Roanoke  
Washington, DC-MD-VA

**Washington**

Bellingham  
Bremerton  
Longview, WA-OR  
Olympia  
Portland-Vancouver, OR-WA  
Richland-Kennewick-Pasco  
Seattle  
Spokane  
Tacoma  
Yakima

**West Virginia**

Charleston  
Cumberland, MD-WV

Hagerstown, MD-PA-WV  
Huntington-Ashland, WV-KY-OH  
Parkersburg, WV-OH  
Steubenville-Weirton, OH-WV-PA  
Wheeling, WV-OH

**Wisconsin**

Appleton-Neenah  
Beloit, WI-IL  
Duluth, MN-WI  
Eau Claire  
Green Bay  
Janesville  
Kenosha  
La Crosse, WI-MN  
Madison  
Milwaukee  
Oshkosh  
Racine  
Round Lake Beach-McHenry, IL-WI  
Sheboygan  
Wausau

**Wyoming**


Casper  
Cheyenne

**Puerto Rico**

Aquadilla  
Arecibo  
Caguas  
Cayey  
Humacao  
Mayaguez  
Ponce  
San Juan  
Vega Baja-Manati

**BILLING CODE 6560-50-P**

## Appendix 4 to the Preamble—No Exposure Certification Form

<b>NPDES FORM 3510-11</b>		United States Environmental Protection Agency Washington, DC 20460 <b>NO EXPOSURE CERTIFICATION for Exclusion from NPDES Storm Water Permitting</b>	Form Approved OMB No. 2040-0211
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Submission of this No Exposure Certification constitutes notice that the entity identified in Section A does not require permit authorization for its storm water discharges associated with industrial activity in the State identified in Section B under EPA's Storm Water Multi-Sector General Permit due to the existence of a condition of no exposure.

A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product. A storm resistant shelter is not required for the following industrial materials and activities:

- drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. "Sealed" means banded or otherwise secured and without operational taps or valves;
- adequately maintained vehicles used in material handling; and
- final products, other than products that would be mobilized in storm water discharges (e.g., rock salt).

A No Exposure Certification must be provided for each facility qualifying for the no exposure exclusion. In addition, the exclusion from NPDES permitting is available on a facility-wide basis only, not for individual outfalls. If any industrial activities or materials are or will be exposed to precipitation, the facility is not eligible for the no exposure exclusion.

By signing and submitting this No Exposure Certification form, the entity in Section A is certifying that a condition of no exposure exists at its facility or site, and is obligated to comply with the terms and conditions of 40 CFR 122.26(g).

**ALL INFORMATION MUST BE PROVIDED ON THIS FORM.**

**Detailed instructions for completing this form and obtaining the no exposure exclusion are provided on pages 3 and 4.**

---

**A. Facility Operator Information**

1. Name: \_\_\_\_\_ 2. Phone: \_\_\_\_\_

3. Mailing Address: a. Street: \_\_\_\_\_

b. City: \_\_\_\_\_ c. State: \_\_\_\_\_ d. Zip Code: \_\_\_\_\_

---

**B. Facility/Site Location Information**

1. Facility Name: \_\_\_\_\_

2. a. Street Address: \_\_\_\_\_

b. City: \_\_\_\_\_ c. County: \_\_\_\_\_

d. State: \_\_\_\_\_ e. Zip Code: \_\_\_\_\_

3. Is the facility located on Indian Lands? Yes ☐ No ☐

4. Is this a Federal facility? Yes ☐ No ☐

5. a. Latitude: \_\_\_\_\_ ° \_\_\_\_\_ ' \_\_\_\_\_ " b. Longitude: \_\_\_\_\_ ° \_\_\_\_\_ ' \_\_\_\_\_ "

6. a. Was the facility or site previously covered under an NPDES storm water permit? Yes ☐ No ☐

b. If yes, enter NPDES permit number: \_\_\_\_\_

7. SIC/Activity Codes: Primary: \_\_\_\_\_ Secondary (if applicable): \_\_\_\_\_

8. Total size of site associated with industrial activity: \_\_\_\_\_ acres

9. a. Have you paved or roofed over a formerly exposed, pervious area in order to qualify for the no exposure exclusion? Yes ☐ No ☐

b. If yes, please indicate approximately how much area was paved or roofed over. Completing this question does not disqualify you for the no exposure exclusion. However, your permitting authority may use this information in considering whether storm water discharges from your site are likely to have an adverse impact on water quality, in which case you could be required to obtain permit coverage.

Less than one acre ☐      One to five acres ☐      More than five acres ☐

NPDES  
FORM  
3510-11**NO EXPOSURE CERTIFICATION for Exclusion from  
NPDES Storm Water Permitting**Form Approved  
OMB No. 2040-0211**C. Exposure Checklist**

Are any of the following materials or activities exposed to precipitation, now or in the foreseeable future?  
(Please check either "Yes" or "No" in the appropriate box.) **If you answer "Yes" to any of these questions  
(1) through (11), you are not eligible for the no exposure exclusion.**

	Yes	No
1. Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water	<input type="checkbox"/>	<input type="checkbox"/>
2. Materials or residuals on the ground or in storm water inlets from spills/leaks	<input type="checkbox"/>	<input type="checkbox"/>
3. Materials or products from past industrial activity	<input type="checkbox"/>	<input type="checkbox"/>
4. Material handling equipment (except adequately maintained vehicles)	<input type="checkbox"/>	<input type="checkbox"/>
5. Materials or products during loading/unloading or transporting activities	<input type="checkbox"/>	<input type="checkbox"/>
6. Materials or products stored outdoors (except final products intended for outside use [e.g., new cars] where exposure to storm water does not result in the discharge of pollutants)	<input type="checkbox"/>	<input type="checkbox"/>
7. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers	<input type="checkbox"/>	<input type="checkbox"/>
8. Materials or products handled/stored on roads or railways owned or maintained by the discharger	<input type="checkbox"/>	<input type="checkbox"/>
9. Waste material (except waste in covered, non-leaking containers [e.g., dumpsters])	<input type="checkbox"/>	<input type="checkbox"/>
10. Application or disposal of process wastewater (unless otherwise permitted)	<input type="checkbox"/>	<input type="checkbox"/>
11. Particulate matter or visible deposits of residuals from roof stacks and/or vents not otherwise regulated (i.e., under an air quality control permit) and evident in the storm water outflow	<input type="checkbox"/>	<input type="checkbox"/>

**D. Certification Statement**

I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES storm water permitting.

I certify under penalty of law that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility or site identified in this document (except as allowed under 40 CFR 122.26(g)(2)).

I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local municipal separate storm sewer system (MS4) into which the facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility.

Additionally, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

NPDES  
FORM  
3510-11

# Instructions for the NO EXPOSURE CERTIFICATION for Exclusion from NPDES Storm Water Permitting

Form Approved  
OMB No. 2040-0211

## Who May File a No Exposure Certification

Federal law at 40 CFR Part 122.26 prohibits point source discharges of storm water associated with industrial activity to waters of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. However, NPDES permit coverage is not required for discharges of storm water associated with industrial activities identified at 40 CFR 122.26(b)(14)(i)-(ix) and (xi) if the discharger can certify that a condition of "no exposure" exists at the industrial facility or site.

Storm water discharges from construction activities identified in 40 CFR 122.26(b)(14)(x) and (b)(15) are not eligible for the no exposure exclusion.

## Obtaining and Maintaining the No Exposure Exclusion

This form is used to certify that a condition of no exposure exists at the industrial facility or site described herein. This certification is only applicable in jurisdictions where EPA is the NPDES permitting authority and must be re-submitted at least once every five years.

The industrial facility operator must maintain a condition of no exposure at its facility or site in order for the no exposure exclusion to remain applicable. If conditions change resulting in the exposure of materials and activities to storm water, the facility operator must obtain coverage under an NPDES storm water permit immediately.

## Where to File the No Exposure Certification Form

Mail the completed no exposure certification form to:

Storm Water No Exposure Certification (4203)  
USEPA  
401 M Street, SW  
Washington, D.C. 20460

## Completing the Form

You must type or print, using uppercase letters, in appropriate areas only. Enter only one character per space (i.e., between the marks). Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words. One form must be completed for each facility or site for which you are seeking to certify a condition of no exposure. Additional guidance on completing this form can be accessed through EPA's web site at [www.epa.gov/owm/sw](http://www.epa.gov/owm/sw). Please make sure you have addressed all applicable questions and have made a photocopy for your records before sending the completed form to the above address.

## Section A. Facility Operator Information

1. Provide the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this certification. The name of the operator may or may not be the same as the name of the facility. The operator is the legal entity that controls the facility's operation, rather than the plant or site manager.
2. Provide the telephone number of the facility operator.
3. Provide the mailing address of the operator (P.O. Box numbers may be used). Include the city, state, and zip code. All correspondence will be sent to this address.

## Section B. Facility/Site Location Information

1. Enter the official or legal name of the facility or site.
2. Enter the complete street address (if no street address exists, provide a geographic description (e.g., Intersection of Routes 9 and 55)), city, county, state, and zip code. Do not use a P.O. Box number.
3. Indicate whether the facility is located on Indian Lands.
4. Indicate whether the industrial facility is operated by a department or agency of the Federal Government (see also Section 313 of the Clean Water Act).
5. Enter the latitude and longitude of the approximate center of the facility or site in degrees/minutes/seconds. Latitude and longitude can be obtained from United States Geological Survey (USGS) quadrangle or topographic maps, by calling 1-(888) ASK-USGS, or by accessing EPA's web site at <http://www.epa.gov/owm/sw/industry/index.htm> and selecting Latitude and Longitude Finders under the Resources/Permit section.

Latitude and longitude for a facility in decimal form must be converted to degrees (°), minutes ('), and seconds (") for proper entry on the certification form. To convert decimal latitude or longitude to degrees/minutes/seconds, follow the steps in the following example.

Example: Convert decimal latitude 45.1234567 to degrees (°), minutes ('), and seconds (").

- a) The numbers to the left of the decimal point are the degrees: 45°.
  - b) To obtain minutes, multiply the first four numbers to the right of the decimal point by 0.006:  $1234 \times 0.006 = 7.404$ .
  - c) The numbers to the left of the decimal point in the result obtained in (b) are the minutes: 7'.
  - d) To obtain seconds, multiply the remaining three numbers to the right of the decimal from the result obtained in (b) by 0.06:  $404 \times 0.06 = 24.24$ . Since the numbers to the right of the decimal point are not used, the result is 24".
  - e) The conversion for 45.1234567 = 45° 7' 24".
6. Indicate whether the facility was previously covered under an NPDES storm water permit. If so, include the permit number.
  7. Enter the 4-digit SIC code which identifies the facility's primary activity, and second 4-digit SIC code identifying the facility's secondary activity, if applicable. SIC codes can be obtained from the Standard Industrial Classification Manual, 1987.
  8. Enter the total size of the site associated with industrial activity in acres. Acreage may be determined by dividing square footage by 43,560, as demonstrated in the following example.  
  
Example: Convert 54,450 ft<sup>2</sup> to acres  
  
Divide 54,450 ft<sup>2</sup> by 43,560 square feet per acre:  
 $54,450 \text{ ft}^2 \div 43,560 \text{ ft}^2/\text{acre} = 1.25 \text{ acres}$ .
  9. Check "Yes" or "No" as appropriate to indicate whether you have paved or roofed over a formerly exposed, pervious area (i.e., lawn, meadow, dirt or gravel road/parking lot) in order to qualify for no exposure. If yes, also indicate approximately how much area was paved or roofed over and is now impervious area.

NPDES  
FORM  
3510-11

## Instructions for the NO EXPOSURE CERTIFICATION for Exclusion from NPDES Storm Water Permitting

Form Approved  
OMB No. 2040-0211

### Section C. Exposure Checklist

Check "Yes" or "No" as appropriate to describe the exposure conditions at your facility. If you answer "Yes" to **ANY** of the questions (1) through (11) in this section, a potential for exposure exists at your site and you cannot certify to a condition of no exposure. You must obtain (or already have) coverage under an NPDES storm water permit. After obtaining permit coverage, you can institute modifications to eliminate the potential for a discharge of storm water exposed to industrial activity, and then certify to a condition of no exposure.

authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures:

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipal, State, Federal, or other public facility: by either a principal executive or ranking elected official.

### Section D. Certification Statement

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means:

- (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or
- (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where

### Paperwork Reduction Act Notice

Public reporting burden for this certification is estimated to average 1.0 hour per certification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, OPPE Regulatory Information Division (2137), USEPA, 401 M Street, SW, Washington, D.C. 20460. Include the OMB control number of this form on any correspondence. Do not send the completed No Exposure Certification form to this address.

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#### BILLING CODE 6560-50-C

### Appendix 5 to Preamble—Regulatory Flexibility for Small Entities

#### A. Regulatory Flexibility for Small Municipal Storm Sewer Systems (MS4s)

##### *Different Compliance, Reporting, or Timetables That Are Responsive to Resources of Small Entities*

NPDES permitting authorities can issue general permits instead of requiring individual permits. This flexibility avoids the high application costs and administrative burden associated with individual permits.

NPDES permitting authorities can specify a time period of up to five years for small MS4s to fully develop and implement their program

Analytic monitoring is not required.

After the first permit term and subsequent permit terms, submittal of a summary report is only required in years two and four (Phase I municipalities are currently required to submit a detailed report each year).

A brief reporting format is encouraged to facilitate compiling and analyzing data from submitted reports. EPA intends to develop a model form for this purpose.

NPDES Permitting Authorities can phase in permit coverage for small MS4s serving jurisdictions with a population under 10,000

on a schedule consistent with a State watershed permitting approach.

##### *Clarifying, Consolidating, or Simplifying Compliance and Reporting Requirements*

The rule avoids duplication in permit requirements by allowing NPDES permitting authorities to include permit conditions that direct an MS4 to follow the requirements of a qualifying local program rather than the requirements of a minimum measure. Compliance with these programs is considered compliance with the NPDES general permit.

The rule allows NPDES permitting authorities to recognize existing responsibilities among different municipal entities to satisfy obligations for the minimum control measures.

A further alternative allows a small MS4 to satisfy its NPDES permit obligations if another governmental entity is already implementing a minimum control measure in the jurisdiction of the small MS4. The following conditions must be met:

1. The other entity is implementing the control measure,
2. The particular control measure (or component thereof) is at least as stringent as the corresponding NPDES permit requirement, and
3. The other entity agrees to implement the control measure on your behalf.

The rule allows a covered small MS4 to "piggy-back" on to the storm water management program of an adjoining Phase I MS4. A small MS4 is waived from the application requirements of § 122.26(d)(1)(iii), (iv) and (d)(2)(iii) [discharge characterization] and may satisfy the requirements of § 122.26(d)(1)(v) and (d)(2)(iv) [identifying a management plan] by referencing the adjoining Phase I MS4's storm water management plan.

The rule accommodates the use of the watershed approach through NPDES general permits that could be issued on a watershed basis. The small MS4 can develop measures that are tailored to meet their watershed requirements. The small MS4's storm water management program can tie into watershed-wide plans.

##### *Performance Rather Than Design Standards for Small Entities*

Small governmental jurisdictions whose MS4s are covered by this rule are allowed to choose the best management practices (BMPs) to be implemented and the measurable goals for each of the minimum control measures:

1. Public education and outreach on storm water impacts
2. Public Involvement/Participation
3. Illicit discharge detection and elimination

4. Construction site storm water runoff control

5. Post-construction storm water management in new development and redevelopment

6. Pollution prevention/good housekeeping for municipal operations

EPA will provide guidance and recommend, but not mandate, certain BMPs for some of the minimum control measures listed above. States can provide guidance to supplement or supplant EPA guidance.

Small MS4s can identify the measurable goals for each of the minimum control measures listed above. In their reports to the NPDES permitting authority, the small MS4s must evaluate their progress towards achievement of their identified measurable goals.

#### *Waivers for Small Entities From Coverage*

The rule allows permitting authorities to waive from coverage MS4s operated by small governmental jurisdictions located within an urbanized area and serving a population less than 1,000 people where the permitting authority has determined the MS4 is not contributing substantially to the pollutant loadings of an interconnected MS4 and, if the MS4 discharges pollutants that have been identified as a cause of impairment in the receiving water of the MS4 then the permitting authority has determined that storm water controls are not needed based on a TMDL that addresses the pollutants of concern.

The rule allows the permitting authority to waive from coverage MS4s serving a population under 10,000 where the permitting authority has evaluated all waters that receive a discharge from the MS4 and the permitting authority has determined that storm water controls are not needed based on a TMDL that addresses the pollutants of concern and future discharges do not have the potential to result in exceedances of water quality standards.

#### **B. Regulatory Flexibility for Small Construction Activities**

##### *Different Compliance, Reporting, or Timetables That Are Responsive to Resources of Small Entities*

The rule gives NPDES permitting authorities discretion not to require the submittal of a notice of intent (NOI) for coverage under a NPDES general permit, thereby reducing administrative and financial burden. All construction sites disturbing greater than 5 acres must submit an NOI.

##### *Clarifying, Consolidating, or Simplifying Compliance and Reporting Requirements*

The rule avoids duplication by allowing the NPDES permitting authority to incorporate by reference State, Tribal, or local programs under a NPDES general permit. Compliance with these programs is considered compliance with the NPDES general permit.

##### *Performance Rather Than Design Standards for Small Entities*

The operator of a covered construction activity selects and implement the BMPs

most appropriate for the construction site based on the operator's storm water pollution prevention plan.

#### *Waivers for Small Entities From Coverage*

Waivers could be granted based on the use of a rainfall erosivity factor or a comprehensive analysis of water quality impacts.

(A) *Low rainfall waiver*: When the rainfall erosivity factor ("R" from Revised Universal Soil Loss Equation) is less than 5 during the period of construction activity, a permit is not required.

(B) *Determination based on Water Quality Analysis*: The NPDES permitting authority can waive from coverage construction activities disturbing from 1 acre up to 5 acres of land where storm water controls are not needed based on:

1. A TMDL approved or established by EPA that addresses the pollutants of concern, or

2. For non-impaired waters, an equivalent analysis that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety.

#### **C. Regulatory Flexibility for Industrial/Commercial Facilities**

##### *Waivers for Small Entities From Coverage*

The rule provides a "no-exposure" waiver provision for Phase I industrial/commercial facilities. Qualifying facilities seeking this provision simply need to complete a self-certification form indicating that no industrial materials or activities are exposed to rain, snow, snow melt and/or runoff.

#### **Appendix 6 of Preamble—Governmental Entities Located Fully or Partially Within an Urbanized Area**

(This is a reference list only, *not* a list of all operators of small MS4s subject to §§ 122.32–122.36. For example, a listed governmental entity is only regulated if it operates a small MS4 within an "urbanized area" boundary as determined by the Bureau of the Census. Furthermore, entities such as military bases, large hospitals, prison complexes, universities, sewer districts, and highway departments that operate a small MS4 within an urbanized area are also subject to the permitting regulations but are not individually listed here. See § 122.26(b)(16) for the definition of a small MS4 and § 122.32(a) for the definition of a regulated small MS4.)

(Source: 1990 Census of Population and Housing, U.S. Bureau of the Census. This list is subject to change with the Decennial Census)

AL Anniston city  
AL Attalla city  
AL Auburn city  
AL Autauga County  
AL Blue Mountain town  
AL Calhoun County  
AL Colbert County  
AL Dale County  
AL Decatur city  
AL Dothan city

AL Elmore County  
AL Etowah County  
AL Flint City town  
AL Florence city  
AL Gadsden city  
AL Glencoe city  
AL Grimes town  
AL Hartselle city  
AL Hobson City town  
AL Hokes Bluff city  
AL Houston County  
AL Kinsey town  
AL Lauderdale County  
AL Lee County  
AL Limestone County  
AL Madison County  
AL Midland City town  
AL Montgomery County  
AL Morgan County  
AL Muscle Shoals city  
AL Napier Field town  
AL Northport city  
AL Opelika city  
AL Oxford city  
AL Phenix City city  
AL Prattville city  
AL Priceville town  
AL Rainbow City city  
AL Russell County  
AL Sheffield city  
AL Southside city  
AL Sylvan Springs town  
AL Talladega County  
AL Tuscaloosa city  
AL Tuscaloosa County  
AL Tuscumbia city  
AL Weaver city  
AR Alexander town  
AR Barling city  
AR Benton County  
AR Cammack Village city  
AR Crawford County  
AR Crittenden County  
AR Farmington city  
AR Fayetteville city  
AR Fort Smith city  
AR Greenland town  
AR Jacksonville city  
AR Jefferson County  
AR Johnson city  
AR Marion city  
AR Miller County  
AR North Little Rock city  
AR Pine Bluff city  
AR Pulaski County  
AR Saline County  
AR Sebastian County  
AR Shannon Hills city  
AR Sherwood city  
AR Springdale city  
AR Sunset town  
AR Texarkana city  
AR Van Buren city  
AR Washington County  
AR West Memphis city  
AR White Hall city  
AZ Apache Junction city  
AZ Chandler city  
AZ El Mirage town  
AZ Gilbert town  
AZ Guadalupe town  
AZ Maricopa County  
AZ Oro Valley town  
AZ Paradise Valley town  
AZ Peoria city  
AZ Pinal County

AZ South Tucson city	CA Victorville city	CT Farmington town
AZ Surprise town	CA Villa Park city	CT Franklin town
AZ Tolleson city	CA Visalia city	CT Glastonbury town
AZ Youngtown town	CA Watsonville city	CT Greenwich town
AZ Yuma city	CA West Sacramento city	CT Groton city
AZ Yuma County	CA Yolo County	CT Groton town
CA Apple Valley town	CA Yuba City city	CT Guilford town
CA Belvedere city	CA Yuba County	CT Hamden town
CA Benicia city	CO Adams County	CT Hartford city
CA Brentwood city	CO Arvada city	CT Hartford County
CA Butte County	CO Boulder city	CT Ledyard town
CA Capitola city	CO Boulder County	CT Lisbon town
CA Carmel-by-the-Sea city	CO Bow Mar town	CT Litchfield County
CA Carpinteria city	CO Broomfield city	CT Manchester town
CA Ceres city	CO Cherry Hills Village city	CT Meriden city
CA Chico city	CO Columbine Valley town	CT Middlebury town
CA Compton city	CO Commerce City city	CT Middlefield town
CA Corte Madera town	CO Douglas County	CT Middlesex County
CA Cotati city	CO Edgewater city	CT Middletown city
CA Davis city	CO El Paso County	CT Milford city (remainder)
CA Del Rey Oaks city	CO Englewood city	CT Monroe town
CA Fairfax town	CO Evans city	CT Montville town
CA Hesperia city	CO Federal Heights city	CT Naugatuck borough
CA Imperial County	CO Fort Collins city	CT New Britain city
CA Lakewood city	CO Fountain city	CT New Canaan town
CA Lancaster city	CO Garden City town	CT New Fairfield town
CA Larkspur city	CO Glendale city	CT New Haven city
CA Lodi city	CO Golden city	CT New Haven County
CA Lompoc city	CO Grand Junction city	CT New London city
CA Marin County	CO Greeley city	CT New London County
CA Marina city	CO Greenwood Village city	CT New Milford town
CA Marysville city	CO Jefferson County	CT Newington town
CA Merced city	CO La Salle town	CT Newtown town
CA Merced County	CO Lakeside town	CT North Branford town
CA Mill Valley city	CO Larimer County	CT North Haven town
CA Monterey city	CO Littleton city	CT Norwalk city
CA Monterey County	CO Longmont city	CT Norwich city
CA Morgan Hill city	CO Manitou Springs city	CT Orange town
CA Napa city	CO Mesa County	CT Oxford town
CA Napa County	CO Mountain View town	CT Plainville town
CA Novato city	CO Northglenn city	CT Plymouth town
CA Pacific Grove city	CO Pueblo city	CT Portland town
CA Palm Desert city	CO Pueblo County	CT Preston town
CA Palmdale city	CO Sheridan city	CT Prospect town
CA Piedmont city	CO Thornton city	CT Rocky Hill town
CA Placer County	CO Weld County	CT Seymour town
CA Redding city	CO Westminster city	CT Shelton city
CA Rocklin city	CO Wheat Ridge city	CT Sherman town
CA Rohnert Park city	CT Ansonia city	CT Somers town
CA Roseville city	CT Avon town	CT South Windsor town
CA Ross town	CT Beacon Falls town	CT Southington town
CA San Anselmo town	CT Berlin town	CT Sprague town
CA San Buenaventura (Ventura) city	CT Bethel town	CT Stonington town
CA San Francisco city	CT Bloomfield town	CT Stratford town
CA San Joaquin County	CT Bozrah town	CT Suffield town
CA San Luis Obispo city	CT Branford town	CT Thomaston town
CA San Luis Obispo County	CT Bridgeport city	CT Thompson town
CA San Rafael city	CT Bristol city	CT Tolland County
CA Sand City city	CT Brookfield town	CT Tolland town
CA Santa Barbara city	CT Burlington town	CT Trumbull town
CA Santa Barbara County	CT Cheshire town	CT Vernon town
CA Santa Cruz city	CT Cromwell town	CT Wallingford town
CA Santa Cruz County	CT Danbury city	CT Waterbury city
CA Santa Maria city	CT Darien town	CT Waterford town
CA Sausalito city	CT Derby city	CT Watertown town
CA Scotts Valley city	CT Durham town	CT West Hartford town
CA Seaside city	CT East Granby town	CT West Haven city
CA Shasta County	CT East Hartford town	CT Weston town
CA Solano County	CT East Haven town	CT Westport town
CA Sonoma County	CT East Lyme town	CT Wethersfield town
CA Stanislaus County	CT East Windsor town	CT Wilton town
CA Suisun City city	CT Easton town	CT Windham County
CA Sutter County	CT Ellington town	CT Windsor Locks town
CA Tiburon town	CT Enfield town	CT Windsor town
CA Tulare County	CT Fairfield County	CT Wolcott town
CA Vacaville city	CT Fairfield town	CT Woodbridge town



CT Woodmont borough	FL Sweetwater city	IA Riverdale city
DE Camden town	FL Titusville city	IA Robins city
DE Dover city	FL Valparaiso city	IA Scott County
DE Kent County	FL Vero Beach city	IA Sergeant Bluff city
DE Newark city	FL Virginia Gardens village	IA Sioux City city
DE Wyoming town	FL Volusia County	IA University Heights city
FL Alachua County	FL Walton County	IA Urbandale city
FL Baldwin town	FL Weeki Wachee city	IA Warren County
FL Bay County	FL West Melbourne city	IA Waterloo city
FL Belleair Shore town	FL Windermere town	IA West Des Moines city
FL Biscayne Park village	GA Albany city	IA Windsor Heights city
FL Brevard County	GA Athens city	IA Woodbury County
FL Callaway city	GA Bartow County	ID Ada County
FL Cape Canaveral city	GA Brunswick city	ID Ammon city
FL Cedar Grove town	GA Catoosa County	ID Bannock County
FL Charlotte County	GA Centerville city	ID Bonneville County
FL Cinco Bayou town	GA Chattahoochee County	ID Chubbuck city
FL Clay County	GA Cherokee County	ID Idaho Falls city
FL Cocoa Beach city	GA Chickamauga city	ID Iona city
FL Cocoa city	GA Clarke County	ID Pocatello city
FL Collier County	GA Columbia County	ID Power County
FL Daytona Beach city	GA Conyers city	IL Addison township
FL Daytona Beach Shores city	GA Dade County	IL Addison village
FL Destin city	GA Dougherty County	IL Algonquin township
FL Edgewater city	GA Douglas County	IL Algonquin village
FL El Portal village	GA Douglasville city	IL Alorton village
FL Florida City city	GA Fayette County	IL Alsip village
FL Fort Pierce city	GA Floyd County	IL Alton city
FL Fort Walton Beach city	GA Fort Oglethorpe city	IL Antioch township
FL Gainesville city	GA Glynn County	IL Antioch village
FL Gulf Breeze city	GA Grovetown city	IL Arlington Heights village
FL Hernando County	GA Henry County	IL Aroma Park village
FL Hillsboro Beach town	GA Houston County	IL Aroma township
FL Holly Hill city	GA Jones County	IL Aurora city
FL Indialantic town	GA Lee County	IL Aurora township
FL Indian Harbour Beach city	GA Lookout Mountain city	IL Avon township
FL Indian River County	GA Mountain Park city	IL Ball township
FL Indian River Shores town	GA Oconee County	IL Bannockburn village
FL Indian Shores town	GA Payne city	IL Barrington township
FL Kissimmee city	GA Rockdale County	IL Barrington village
FL Lazy Lake village	GA Rome city	IL Bartlett village
FL Lynn Haven city	GA Rossville city	IL Bartonville village
FL Malabar town	GA Stockbridge city	IL Batavia city
FL Marion County	GA Vernonburg town	IL Batavia township
FL Martin County	GA Walker County	IL Beach Park village
FL Mary Esther city	GA Warner Robins city	IL Bedford Park village
FL Melbourne Beach town	GA Winterville city	IL Belleville city
FL Melbourne city	GA Woodstock city	IL Bellevue village
FL Melbourne Village town	IA Altoona city	IL Bellwood village
FL Naples city	IA Asbury city	IL Bensenville village
FL New Smyrna Beach city	IA Bettendorf city	IL Benton township
FL Niceville city	IA Black Hawk County	IL Berkeley village
FL Ocala city	IA Buffalo city	IL Berwyn city
FL Ocean Breeze Park town	IA Carter Lake city	IL Bethalto village
FL Okaloosa County	IA Cedar Falls city	IL Blackhawk township
FL Orange Park town	IA Clive city	IL Bloom township
FL Ormond Beach city	IA Coralville city	IL Bloomingdale township
FL Osceola County	IA Council Bluffs city	IL Bloomingdale village
FL Palm Bay city	IA Dallas County	IL Bloomington city
FL Panama City city	IA Dubuque city	IL Bloomington township
FL Parker city	IA Dubuque County	IL Blue Island city
FL Ponce Inlet town	IA Elk Run Heights city	IL Bolingbrook village
FL Port Orange city	IA Evansdale city	IL Bourbonnais township
FL Port St. Lucie city	IA Hiawatha city	IL Bourbonnais village
FL Punta Gorda city	IA Iowa City city	IL Bowling township
FL Rockledge city	IA Johnson County	IL Bradley village
FL Santa Rosa County	IA Johnston city	IL Bremen township
FL Satellite Beach city	IA Le Claire city	IL Bridgeview village
FL Sewall's Point town	IA Linn County	IL Bristol township
FL Shalimar town	IA Marion city	IL Broadview village
FL South Daytona city	IA Norwalk city	IL Brookfield village
FL Springfield city	IA Panorama Park city	IL Brooklyn village
FL St. Johns County	IA Pleasant Hill city	IL Buffalo Grove village
FL St. Lucie County	IA Polk County	IL Burbank city
FL St. Lucie village	IA Pottawattamie County	IL Burnham village
FL Stuart city	IA Raymond city	IL Burr Ridge village

IL Burritt township	IL Elk Grove Village village	IL Jerome village
IL Burton township	IL Elm Grove township	IL Jo Daviess County
IL Cahokia village	IL Elmhurst city	IL Joliet city
IL Calumet City city	IL Elmwood Park village	IL Joliet township
IL Calumet Park village	IL Evanston city	IL Justice village
IL Calumet township	IL Evergreen Park village	IL Kane County
IL Canteen township	IL Fairmont City village	IL Kankakee city
IL Capital township	IL Fairview Heights city	IL Kankakee County
IL Carbon Cliff village	IL Flossmoor village	IL Kankakee township
IL Carol Stream village	IL Fondulac township	IL Kendall County
IL Carpentersville Village	IL Ford Heights village	IL Kenilworth village
IL Cary village	IL Forest Park village	IL Kickapoo township
IL Caseyville township	IL Forest View village	IL Kildeer village
IL Caseyville village	IL Forsyth village	IL La Grange Park village
IL Centreville city	IL Fort Russell township	IL La Grange village
IL Centreville township	IL Foster township	IL Lake Barrington village
IL Champaign city	IL Fox Lake village	IL Lake Bluff village
IL Champaign County	IL Fox River Grove village	IL Lake Forest city
IL Champaign township	IL Frankfort township	IL Lake in the Hills village
IL Channahon township	IL Frankfort village	IL Lake Villa township
IL Cherry Valley township	IL Franklin Park village	IL Lake Villa village
IL Cherry Valley village	IL Fremont township	IL Lake Zurich village
IL Chicago city	IL Gardnertownship	IL Lakemoor village
IL Chicago Heights city	IL Geneva city	IL Lakewood village
IL Chicago Ridge village	IL Geneva township	IL Lansing village
IL Chouteau township	IL Gilberts village	IL Leland Grove city
IL Cicero town	IL Glen Carbon village	IL Lemont township
IL Cincinnati township	IL Glen Ellyn village	IL Leyden township
IL Clarendon Hills village	IL Glencoe village	IL Libertyville township
IL Coal Valley township	IL Glendale Heights village	IL Libertyville village
IL Coal Valley village	IL Glenview village	IL Limestone township
IL Collinsville city	IL Glenwood village	IL Lincolnshire village
IL Collinsville township	IL Godfrey township	IL Lincolnwood village
IL Colona township	IL Golf village	IL Lindenhurst village
IL Colona village	IL Grafton township	IL Lisle township
IL Columbia city	IL Grandview village	IL Lisle village
IL Country Club Hills city	IL Granite City city	IL Lockport city
IL Countryside city	IL Grant township	IL Lockport township
IL Crest Hill city	IL Grayslake village	IL Lombard village
IL Crestwood village	IL Green Oaks village	IL Long Creek township
IL Crete township	IL Green Rock city	IL Long Grove village
IL Crete village	IL Groveland township	IL Loves Park city
IL Creve Coeur village	IL Gurnee village	IL Lynwood village
IL Crystal Lake city	IL Hainesville village	IL Lyons township
IL Cuba township	IL Hampton township	IL Lyons village
IL Curran township	IL Hampton village	IL Machesney Park village
IL Darien city	IL Hanna township	IL Macon County
IL Decatur city	IL Hanover Park village	IL Madison city
IL Decatur township	IL Hanover township	IL Madison County
IL Deer Park village	IL Harlem township	IL Maine township
IL Deerfield township	IL Harristown township	IL Markham city
IL Deerfield village	IL Harristown village	IL Marquette Heights city
IL Des Plaines city	IL Hartford village	IL Maryville village
IL Dixmoor village	IL Harvey city	IL Matteson village
IL Dolton village	IL Harwood Heights village	IL Maywood village
IL Dorr township	IL Hawthorn Woods village	IL McCook village
IL Downers Grove township	IL Hazel Crest village	IL McCullom Lake village
IL Downers Grove village	IL Henry County	IL McHenry city
IL Dry Grove township	IL Hensley township	IL McHenry County
IL Du Page township	IL Hickory Hills city	IL McHenry township
IL Dundee township	IL Hickory Point township	IL McLean County
IL Dunleith township	IL Highland Park city	IL Medina township
IL Dupo village	IL Highwood city	IL Melrose Park village
IL East Alton village	IL Hillside village	IL Merrionette Park village
IL East Dubuque city	IL Hinsdale village	IL Midlothian village
IL East Dundee village	IL Hodgkins village	IL Milan village
IL East Hazel Crest village	IL Hoffman Estates village	IL Milton township
IL East Moline city	IL Hollis township	IL Moline city
IL East Peoria city	IL Homer township	IL Moline township
IL East St. Louis city	IL Hometown city	IL Monette township
IL Edwardsville city	IL Homewood village	IL Monroe County
IL Edwardsville township	IL Indian Creek village	IL Montgomery village
IL Ela township	IL Indian Head Park village	IL Moro township
IL Elgin city	IL Inverness village	IL Morton Grove village
IL Elgin township	IL Itasca village	IL Morton township
IL Elk Grove township	IL Jarvis township	IL Morton village

IL Mount Prospect village	IL Riverdale village	IL Troy city
IL Mount Zion township	IL Riverside township	IL Troy township
IL Mount Zion village	IL Riverside village	IL University Park village
IL Mundelein village	IL Riverwoods village	IL Urbana city
IL Nameoki township	IL Robbins village	IL Urbana township
IL Naperville city	IL Rochester township	IL Venice city
IL Naperville township	IL Rock Island city	IL Venice township
IL National City village	IL Rock Island County	IL Vernon Hills village
IL New Lenox township	IL Rock Island township	IL Vernon township
IL New Lenox village	IL Rockdale village	IL Villa Park village
IL New Millford village	IL Rockford township	IL Warren township
IL New Trier township	IL Rockton township	IL Warrenville city
IL Newport township	IL Rockton village	IL Washington city
IL Niles township	IL Rolling Meadows city	IL Washington Park village
IL Niles village	IL Romeoville village	IL Washington township
IL Normal town	IL Roscoe township	IL Wauconda township
IL Normal township	IL Roscoe village	IL Waukegan city
IL Norridge village	IL Roselle village	IL Waukegan township
IL North Aurora village	IL Rosemont village	IL Wayne township
IL North Barrington village	IL Round Lake Beach village	IL West Chicago city
IL North Chicago city	IL Round Lake Heights village	IL West Deerfield township
IL North Pekin village	IL Round Lake Park village	IL West Dundee village
IL North Riverside village	IL Round Lake village	IL West Peoria township
IL Northbrook village	IL Roxana village	IL Westchester village
IL Northfield township	IL Rutland township	IL Western Springs village
IL Northfield village	IL Sangamon County	IL Westmont village
IL Northlake city	IL Sauget village	IL Wheatland township
IL Norwood Park township	IL Sauk Village village	IL Wheaton city
IL Norwood village	IL Savoy village	IL Wheeling township
IL Nunda township	IL Schaumburg township	IL Wheeling village
IL Oak Brook village	IL Schaumburg village	IL Whitmore township
IL Oak Forest city	IL Schiller Park village	IL Will County
IL Oak Grove village	IL Shields township	IL Willow Springs village
IL Oak Lawn village	IL Shiloh Valley township	IL Willowbrook village
IL Oak Park village	IL Shiloh village	IL Wilmette village
IL Oakbrook Terrace city	IL Shorewood village	IL Winfield township
IL Oakley township	IL Silvis city	IL Winfield village
IL Oakwood Hills village	IL Skokie village	IL Winnebago County
IL O'Fallon city	IL Sleepy Hollow village	IL Winnetka village
IL O'Fallon township	IL Somer township	IL Winthrop Harbor village
IL Olympia Fields village	IL South Beloit city	IL Wood Dale city
IL Orland Hills village	IL South Chicago Heights village	IL Wood River city
IL Orland Park village	IL South Elgin village	IL Wood River township
IL Orland township	IL South Holland village	IL Woodford County
IL Oswego township	IL South Moline township	IL Woodridge village
IL Oswego village	IL South Rock Island township	IL Woodside township
IL Otto township	IL South Roxana village	IL Worth township
IL Owen township	IL South Wheatland township	IL Worth village
IL Palatine township	IL Southern View village	IL York township
IL Palatine village	IL Spring Bay township	IL Zion city
IL Palos Heights city	IL Springfield city	IN Aboite township
IL Palos Hills city	IL Springfield township	IN Adams township
IL Palos Park village	IL St. Charles city	IN Allen County
IL Palos township	IL St. Charles township	IN Anderson city
IL Park City city	IL St. Clair County	IN Anderson township
IL Park Forest village	IL St. Clair township	IN Baugo township
IL Park Ridge city	IL Steger village	IN Beech Grove city
IL Pekin city	IL Stickney township	IN Bloomington city
IL Pekin township	IL Stickney village	IN Bloomington township
IL Peoria city	IL Stites township	IN Boone County
IL Peoria County	IL Stone Park village	IN Buck Creek township
IL Peoria Heights village	IL Stookey township	IN Calumet township
IL Phoenix village	IL Streamwood village	IN Carmel city
IL Pin Oak township	IL Sugar Grove township	IN Castleton town
IL Plainfield township	IL Sugar Loaf township	IN Cedar Creek township
IL Plainfield village	IL Summit village	IN Center township
IL Pontoon Beach village	IL Sunnyside village	IN Centre township
IL Posen village		IN Chesterfield town
IL Precinct 10	IL Swansea village	IN Chesterton town
IL Prospect Heights city	IL Tazewell County	IN Clark County
IL Proviso township	IL Thornton township	IN Clarksville town
IL Rich township	IL Thornton village	IN Clay township
IL Richton Park village	IL Tinley Park village	IN Clermont town
IL Richwoods township	IL Tolono township	IN Cleveland township
IL River Forest village	IL Tower Lakes village	IN Concord township
IL River Grove village	IL Tremont township	IN Country Club Heights town

IN Crown Point city	IN Osolo township	KS Leawood city
IN Crows Nest town	IN Otter Creek township	KS Lenexa city
IN Cumberland town	IN Penn township	KS Merriam city
IN Daleville town	IN Perry township	KS Minneha township
IN Delaware County	IN Pigeon township	KS Mission city
IN Delaware township	IN Pike township	KS Mission Hills city
IN Dyer town	IN Pleasant township	KS Mission township
IN Eagle township	IN Portage city	KS Mission Woods city
IN East Chicago city	IN Portage township	KS Monticello township
IN Edgewood town	IN Porter County	KS Ohio township
IN Elkhart city	IN Porter town	KS Olathe city
IN Elkhart County	IN Richland township	KS Olathe township
IN Elkhart township	IN Riley township	KS Park City city
IN Evansville city	IN River Forest town	KS Park township
IN Fairfield township	IN Rocky Ripple town	KS Prairie Village city
IN Fall Creek township	IN Roseland town	KS Riverside township
IN Fishers town	IN Ross township	KS Roeland Park city
IN Floyd County	IN Salem township	KS Salem township
IN Fort Wayne city	IN Schererville town	KS Sedgwick County
IN Franklin township	IN Seelyville town	KS Shawnee city
IN Gary city	IN Sellersburg town	KS Shawnee County
IN German township	IN Selma town	KS Shawnee township
IN Goshen city	IN Silver Creek township	KS Soldier township
IN Greenwood city	IN South Bend city	KS Tecumseh township
IN Griffith town	IN Southport city	KS Topeka township
IN Hamilton County	IN Speedway town	KS Waco township
IN Hamilton township	IN Spring Hill town	KS Wakarusa township
IN Hammond city	IN St. John town	KS Washington township
IN Hancock County	IN St. John township	KS Westwood city
IN Hanover township	IN St. Joseph County	KS Westwood Hills city
IN Harris township	IN St. Joseph township	KS Williamsport township
IN Harrison township	IN Sugar Creek township	KS Wyandotte County
IN Hendricks County	IN Taylor township	KY Alexandria city
IN Highland town	IN Terre Haute city	KY Ashland city
IN Hobart city	IN Tippecanoe County	KY Bellefonte city
IN Hobart township	IN Tippecanoe township	KY Bellevue city
IN Homecroft town	IN Union township	KY Boone County
IN Honey Creek township	IN Utica township	KY Boyd County
IN Howard County	IN Van Buren township	KY Bromley city
IN Howard township	IN Vanderburgh County	KY Bullitt County
IN Indian Village town	IN Vigo County	KY Campbell County
IN Jackson township	IN Wabash township	KY Catlettsburg city
IN Jefferson township	IN Warren Park town	KY Christian County
IN Jeffersonville city	IN Warren township	KY Covington city
IN Jeffersonville township	IN Warrick County	KY Crescent Park city
IN Johnson County	IN Washington township	KY Crescent Springs city
IN Knight township	IN Wayne township	KY Crestview city
IN Kokomo city	IN Wea township	KY Crestview Hills city
IN Lafayette city	IN West Lafayette city	KY Daviess County
IN Lafayette township	IN West Terre Haute town	KY Dayton city
IN Lake County	IN Westchester township	KY Edgewood city
IN Lake Station city	IN Westfield town	KY Elsmere city
IN Lawrence city	IN White River township	KY Erlanger city
IN Lawrence township	IN Whiteland town	KY Fairview city
IN Liberty township	IN Whiting city	KY Flatwoods city
IN Lincoln township	IN Williams Creek town	KY Florence city
IN Lost Creek township	IN Woodlawn Heights town	KY Forest Hills city
IN Madison County	IN Wynnedale town	KY Fort Mitchell city
IN Meridian Hills town	IN Yorktown town	KY Fort Thomas city
IN Merrillville town	IN Zionsville town	KY Fort Wright city
IN Mishawaka city	KS Attica township	KY Fox Chase city
IN Monroe County	KS Bel Aire city	KY Greenup County
IN Mount Pleasant township	KS Countryside city	KY Hebron Estates city
IN Muncie city	KS Delano township	KY Henderson city
IN Munster town	KS Doniphan County	KY Henderson County
IN New Albany city	KS Douglas County	KY Highland Heights city
IN New Albany township	KS Eastborough city	KY Hillview city
IN New Chicago town	KS Elwood city	KY Hunters Hollow city
IN New Haven city	KS Fairway city	KY Independence city
IN New Whiteland town	KS Gypsum township	KY Jessamine County
IN Newburgh town	KS Haysville city	KY Kenton County
IN North Crows Nest town	KS Johnson County	KY Kenton Vale city
IN North township	KS Kechi city	KY Lakeside Park city
IN Ogden Dunes town	KS Kechi township	KY Latonia Lakes city
IN Ohio township	KS Lake Quivira city	KY Ludlow city
IN Osceola town	KS Lawrence city	KY Melbourne city

KY Newport city	MA Cambridge city	MA Medway town
KY Oak Grove city	MA Canton town	MA Melrose city
KY Owensboro city	MA Charlton town	MA Merrimac town
KY Park Hills city	MA Chelmsford town	MA Methuen town
KY Pioneer Village city	MA Chelsea city	MA Middlesex County
KY Raceland city	MA Chicopee city	MA Middleton town
KY Russell city	MA Cohasset town	MA Millbury town
KY Silver Grove city	MA Concord town	MA Millis town
KY Southgate city	MA Dalton town	MA Millville town
KY Taylor Mill city	MA Danvers town	MA Milton town
KY Villa Hills city	MA Dartmouth town	MA Nahant town
KY Wilder city	MA Dedham town	MA Natick town
KY Woodlawn city	MA Dennis town	MA Needham town
KY Wurtland city	MA Dighton town	MA New Bedford city
LA Alexandria city	MA Dover town	MA Newton city
LA Baker city	MA Dracut town	MA Norfolk town
LA Ball town	MA Dudley town	MA North Andover town
LA Bossier City city	MA East Bridgewater town	MA North Attleborough town
LA Bossier Parish	MA East Longmeadow town	MA North Reading town
LA Broussard town	MA Easthampton town	MA Northampton city
LA Caddo Parish	MA Easton town	MA Northborough town
LA Calcasieu Parish	MA Essex County	MA Northbridge town
LA Carencro city	MA Essex town	MA Norton town
LA Denham Springs city	MA Everett city	MA Norwell town
LA Houma city	MA Fairhaven town	MA Norwood town
LA Lafayette city	MA Fall River city	MA Oxford town
LA Lafayette Parish	MA Fitchburg city	MA Paxton town
LA Lafourche Parish	MA Foxborough town	MA Peabody city
LA Lake Charles city	MA Framingham town	MA Pembroke town
LA Livingston Parish	MA Franklin town	MA Pittsfield city
LA Monroe city	MA Freetown town	MA Plainville town
LA Ouachita Parish	MA Georgetown town	MA Plymouth County
LA Pineville city	MA Gloucester city	MA Quincy city
LA Plaquemines Parish	MA Grafton town	MA Randolph town
LA Port Allen city	MA Granby town	MA Raynham town
LA Rapides Parish	MA Groton town	MA Reading town
LA Richwood town	MA Groveland town	MA Rehoboth town
LA Scott town	MA Hadley town	MA Revere city
LA Slidell city	MA Halifax town	MA Rockland town
LA St. Bernard Parish	MA Hamilton town	MA Rockport town
LA St. Charles Parish	MA Hampden County	MA Salem city
LA St. Tammany Parish	MA Hampden town	MA Sandwich town
LA Sulphur city	MA Hampshire County	MA Saugus town
LA Terrebonne Parish	MA Hanover town	MA Scituate town
LA West Baton Rouge Parish	MA Hanson town	MA Seekonk town
LA West Monroe city	MA Haverhill city	MA Sharon town
LA Westlake city	MA Hingham town	MA Shrewsbury town
LA Zachary city	MA Hinsdale town	MA Somerset town
MA Abington town	MA Holbrook town	MA Somerville city
MA Acton town	MA Holden town	MA South Hadley town
MA Acushnet town	MA Holliston town	MA Southampton town
MA Agawam town	MA Holyoke city	MA Southborough town
MA Amesbury town	MA Hudson town	MA Southwick town
MA Andover town	MA Hull town	MA Springfield city
MA Arlington town	MA Lanesborough town	MA Stoneham town
MA Ashland town	MA Lawrence city	MA Stoughton town
MA Attleboro city	MA Leicester town	MA Stow town
MA Auburn town	MA Leominster city	MA Sudbury town
MA Avon town	MA Lexington town	MA Sutton town
MA Barnstable County	MA Lincoln town	MA Swampscott town
MA Barnstable town	MA Littleton town	MA Swansea town
MA Bedford town	MA Longmeadow town	MA Taunton city
MA Bellingham town	MA Lowell city	MA Tewksbury town
MA Belmont town	MA Ludlow town	MA Tyngsborough town
MA Berkshire County	MA Lunenburg town	MA Uxbridge town
MA Beverly city	MA Lynn city	MA Wakefield town
MA Billerica town	MA Lynnfield town	MA Walpole town
MA Blackstone town	MA Malden city	MA Waltham city
MA Boxborough town	MA Manchester town	MA Watertown town
MA Boylston town	MA Mansfield town	MA Wayland town
MA Braintree town	MA Marblehead town	MA Webster town
MA Bridgewater town	MA Marlborough city	MA Wellesley town
MA Bristol County	MA Mashpee town	MA Wenham town
MA Brockton city	MA Maynard town	MA West Boylston town
MA Brookline town	MA Medfield town	MA West Bridgewater town
MA Burlington town	MA Medford city	MA West Springfield town

MA Westborough town	ME Cape Elizabeth town	MI Delta township
MA Westfield city	ME Cumberland County	MI Detroit city
MA Westford town	ME Eliot town	MI East China township
MA Westminster town	ME Falmouth town	MI East Detroit city
MA Weston town	ME Gorham town	MI East Grand Rapids city
MA Westport town	ME Kittery town	MI East Lansing city
MA Westwood town	ME Lebanon town	MI Eaton County
MA Weymouth town	ME Lewiston city	MI Ecorse city
MA Whitman town	ME Lisbon town	MI Emmett township
MA Wilbraham town	ME Old Town city	MI Erie township
MA Williamsburg town	ME Orono town	MI Essexville city
MA Wilmington town	ME Penobscot County	MI Farmington city
MA Winchester town	ME Penobscot Indian Island Reservation	MI Farmington Hills city
MA Winthrop town	ME Portland city	MI Ferndale city
MA Woburn city	ME Sabattus town	MI Fillmore township
MA Worcester County	ME Scarborough town	MI Flat Rock city
MA Wrentham town	ME South Berwick town	MI Flint township
MA Yarmouth town	ME South Portland city	MI Flushing city
MD Allegany County	ME Veazie town	MI Flushing township
MD Annapolis city	ME Westbrook city	MI Fort Gratiot township
MD Bel Air town	ME York County	MI Frankenlust township
MD Berwyn Heights town	MI Ada township	MI Franklin village
MD Bladensburg town	MI Allegan County	MI Fraser city
MD Bowie city	MI Allen Park city	MI Fruitport township
MD Brentwood town	MI Alpine township	MI Gaines township
MD Brookeville town	MI Ann Arbor township	MI Garden City city
MD Capitol Heights town	MI Auburn Hills city	MI Genesee County
MD Cecil County	MI Bangor township	MI Genesee township
MD Cheverly town	MI Bath township	MI Georgetown township
MD Chevy Chase Section Five village	MI Battle Creek city	MI Gibraltar city
MD Chevy Chase Section Three village	MI Bay City city	MI Grand Blanc city
MD Chevy Chase town	MI Bay County	MI Grand Blanc township
MD Chevy Chase Village town	MI Bedford township	MI Grand Rapids Charter township
MD College Park city	MI Belleville city	MI Grandville city
MD Colmar Manor town	MI Benton Charter township	MI Grosse Ile township
MD Cottage City town	MI Benton Harbor city	MI Grosse Pointe city
MD Cumberland city	MI Berkley city	MI Grosse Pointe Farms city
MD District Heights city	MI Berlin township	MI Grosse Pointe Park city
MD Edmonston town	MI Berrien County	MI Grosse Pointe Shores village
MD Elkton town	MI Beverly Hills village	MI Grosse Pointe Woods city
MD Fairmount Heights town	MI Bingham Farms village	MI Hampton township
MD Forest Heights town	MI Birmingham city	MI Hamtramck city
MD Frederick city	MI Blackman township	MI Harper Woods city
MD Frostburg city	MI Bloomfield Hills city	MI Harrison township
MD Funkstown town	MI Bloomfield township	MI Hazel Park city
MD Gaithersburg city	MI Bridgeport township	MI Highland Park city
MD Garrett Park town	MI Brownstown township	MI Highland township
MD Glen Echo town	MI Buena Vista Charter township	MI Holland city
MD Glenarden town	MI Burtchville township	MI Holland township
MD Greenbelt city	MI Burton city	MI Howard township
MD Hagerstown city	MI Byron township	MI Hudsonville city
MD Highland Beach town	MI Calhoun County	MI Huntington Woods city
MD Hyattsville city	MI Canton township	MI Huron township
MD Kensington town	MI Carrollton township	MI Independence township
MD Landover Hills town	MI Cascade township	MI Ingham County
MD Laurel city	MI Cass County	MI Inkster city
MD Martin's Additions village	MI Center Line city	MI Ira township
MD Morningside town	MI Chesterfield township	MI Jackson city
MD Mount Rainier city	MI Clarkston village	MI Jackson County
MD New Carrollton city	MI Clawson city	MI James township
MD North Brentwood town	MI Clay township	MI Kalamazoo city
MD Riverdale town	MI Clayton township	MI Kalamazoo County
MD Rockville city	MI Clinton County	MI Kalamazoo township
MD Seat Pleasant city	MI Clinton township	MI Keego Harbor city
MD Smithsburg town	MI Clio city	MI Kent County
MD Somerset town	MI Clyde township	MI Kentwood city
MD Takoma Park city	MI Commerce township	MI Kimball township
MD University Park town	MI Comstock township	MI Kochville township
MD Walkersville town	MI Cooper township	MI Lake Angelus city
MD Washington Grove town	MI Dalton township	MI Laketon township
MD Williamsport town	MI Davison city	MI Laketown township
ME Androscoggin County	MI Davison township	MI Lansing city
ME Auburn city	MI De Witt township	MI Lansing township
ME Bangor city	MI Dearborn city	MI Lathrup Village city
ME Berwick town	MI Dearborn Heights city	MI Leoni township
ME Brewer city	MI Delhi Charter township	MI Lincoln Park city

MI Lincoln township	MI Spring Arbor township	MN Falcon Heights city
MI Livonia city	MI Springfield city	MN Farmington city
MI Macomb County	MI Springfield township	MN Fort Snelling unorg.
MI Macomb township	MI St. Clair city	MN Fridley city
MI Madison Heights city	MI St. Clair County	MN Gem Lake city
MI Marysville city	MI St. Clair Shores city	MN Golden Valley city
MI Melvindale city	MI St. Clair township	MN Grant township
MI Meridian township	MI St. Joseph Charter township	MN Greenwood city
MI Milford township	MI St. Joseph city	MN Ham Lake city
MI Milton township	MI Stevensville village	MN Haven township
MI Monitor township	MI Sullivan township	MN Hennepin County
MI Monroe County	MI Summit township	MN Hermantown city
MI Mount Clemens city	MI Sumpter township	MN Hilltop city
MI Mount Morris city	MI Superior township	MN Hopkins city
MI Mount Morris township	MI Swartz Creek city	MN Houston County
MI Mundy township	MI Sylvan Lake city	MN Inver Grove Heights city
MI Muskegon city	MI Taylor city	MN La Crescent city
MI Muskegon County	MI Texas township	MN La Crescent township
MI Muskegon Heights city	MI Thetford township	MN Lake Elmo city
MI Muskegon township	MI Thomas township	MN Lakeville city
MI New Baltimore city	MI Trenton city	MN Landfall city
MI Niles city	MI Troy city	MN Lauderdale city
MI Niles township	MI Utica city	MN Le Sauk township
MI North Muskegon city	MI Van Buren township	MN Lexington city
MI Northville city	MI Vienna township	MN Lilydale city
MI Northville township	MI Walker city	MN Lino Lakes city
MI Norton Shores city	MI Walled Lake city	MN Little Canada city
MI Novi city	MI Washington township	MN Long Lake city
MI Novi township	MI Washtenaw County	MN Loretto city
MI Oak Park city	MI Waterford township	MN Mahtomedi city
MI Oakland Charter township	MI Wayne city	MN Maple Grove city
MI Oakland County	MI West Bloomfield township	MN Maple Plain city
MI Orchard Lake Village city	MI Westland city	MN Maplewood city
MI Orion township	MI White Lake township	MN Marion township
MI Oshtemo township	MI Whiteford township	MN Medicine Lake city
MI Ottawa County	MI Williamstown township	MN Medina city
MI Parchment city	MI Wixom city	MN Mendota city
MI Park township	MI Wolverine Lake village	MN Mendota Heights city
MI Pavilion township	MI Woodhaven city	MN Midway township
MI Pennfield township	MI Wyandotte city	MN Minden township
MI Pittsfield township	MI Wyoming city	MN Minnetonka Beach city
MI Plainfield township	MI Ypsilanti city	MN Minnetonka city
MI Pleasant Ridge city	MI Ypsilanti township	MN Minnetrista city
MI Plymouth city	MI Zeeland city	MN Moorhead city
MI Plymouth township	MI Zilwaukee city	MN Moorhead township
MI Pontiac city	MN Andover city	MN Mound city
MI Port Huron city	MN Anoka city	MN Mounds View city
MI Port Huron township	MN Anoka County	MN New Brighton city
MI Portage city	MN Apple Valley city	MN New Hope city
MI Portsmouth township	MN Arden Hills city	MN Newport city
MI Redford township	MN Benton County	MN North Oaks city
MI Richfield township	MN Birchwood Village city	MN North St. Paul city
MI River Rouge city	MN Blaine city	MN Oakdale city
MI Riverview city	MN Bloomington city	MN Oakport township
MI Rochester city	MN Brooklyn Center city	MN Olmsted County
MI Rochester Hills city	MN Brooklyn Park city	MN Orono city
MI Rockwood city	MN Burnsville city	MN Osseo city
MI Romulus city	MN Carver County	MN Plymouth city
MI Roosevelt Park city	MN Cascade township	MN Polk County
MI Roseville city	MN Champlin city	MN Prior Lake city
MI Ross township	MN Chanhassen city	MN Proctor city
MI Royal Oak city	MN Circle Pines city	MN Ramsey city
MI Royal Oak township	MN Clay County	MN Robbinsdale city
MI Saginaw city	MN Coon Rapids city	MN Rochester city
MI Saginaw County	MN Cottage Grove city	MN Rochester township
MI Saginaw township	MN Credit River township	MN Rosemount city
MI Schoolcraft township	MN Crystal city	MN Roseville city
MI Scio township	MN Dakota County	MN Sartell city
MI Shelby township	MN Dayton city	MN Sauk Rapids city
MI Shoreham village	MN Deephaven city	MN Sauk Rapids township
MI Sodus township	MN Dilworth city	MN Savage city
MI South Rockwood village	MN Duluth city	MN Scott County
MI Southfield city	MN Eagan city	MN Sherburne County
MI Southfield township	MN East Grand Forks city	MN Shoreview city
MI Southgate city	MN Eden Prairie city	MN Shorewood city
MI Spaulding township	MN Excelsior city	MN South St. Paul city



MN Spring Lake Park city	MO Cottleville township	MO Missouri River township
MN Spring Park city	MO Country Club Hills city	MO Missouri township
MN St. Anthony city	MO Country Club village	MO Moline Acres city
MN St. Cloud city	MO Country Life Acres village	MO Mount Pleasant township
MN St. Cloud township	MO Crestwood city	MO Newton County
MN St. Louis County	MO Creve Coeur city	MO Normandy city
MN St. Paul Park city	MO Creve Coeur township	MO Normandy township
MN Stearns County	MO Crystal Lake Park city	MO North Campbell No. 1 township
MN Sunfish Lake city	MO Dardenne township	MO North Campbell No. 2 township
MN Tonka Bay city	MO Dellwood city	MO North Campbell No. 3 township
MN Vadnais Heights city	MO Dennis Acres village	MO North Kansas City city
MN Victoria city	MO Des Peres city	MO North View township
MN Waite Park city	MO Duquesne village	MO Northmoor city
MN Washington County	MO Edmundson village	MO Northwest township
MN Wayzata city	MO Ellisville city	MO Northwoods city
MN West St. Paul city	MO Fenton city	MO Norwood Court town
MN White Bear Lake city	MO Ferguson city	MO Oakland city
MN White Bear township	MO Ferguson township	MO Oakland Park village
MN Willernie city	MO Flordell Hills city	MO Oaks village
MN Woodbury city	MO Florissant city	MO Oakview village
MN Woodland city	MO Florissant township	MO Oakwood Park village
MN Wright County	MO Fox township	MO Oakwood village
MO Airport Drive village	MO Friedens township	MO O'Fallon city
MO Airport township	MO Frontenac city	MO O'Fallon township
MO Andrew County	MO Galena township	MO Olivette city
MO Arnold city	MO Gallatin township	MO Overland city
MO Avondale city	MO Gladstone city	MO Pagedale city
MO Ballwin city	MO Glen Echo Park village	MO Parkdale town
MO Battlefield town	MO Glenaire village	MO Parkville city
MO Bella Villa city	MO Glendale city	MO Pasadena Hills city
MO Bellefontaine Neighbors city	MO Grandview city	MO Pasadena Park village
MO Bellerive village	MO Grantwood Village town	MO Pettis township
MO Bel-Nor village	MO Gravois township	MO Pine Lawn city
MO Bel-Ridge village	MO Greendale city	MO Platte County
MO Belton city	MO Greene County	MO Platte township
MO Berkeley city	MO Hadley township	MO Platte Woods city
MO Beverly Hills city	MO Hanley Hills village	MO Pleasant Valley city
MO Big Creek township	MO Harvester township	MO Prairie township
MO Birmingham village	MO Hazelwood city	MO Queeny township
MO Black Jack city	MO High Ridge township	MO Randolph village
MO Blanchette township	MO Hillsdale village	MO Raymore city
MO Blue Springs city	MO Houston Lake city	MO Raymore township
MO Blue township	MO Huntleigh city	MO Raytown city
MO Bonhomme township	MO Imperial township	MO Redings Mill village
MO Boone County	MO Iron Gates village	MO Richmond Heights city
MO Boone township	MO Jackson County	MO Rivers township
MO Breckenridge Hills village	MO Jasper County	MO Riverside city
MO Brentwood city	MO Jefferson County	MO Riverview village
MO Bridgeton city	MO Jefferson township	MO Rock Hill city
MO Brooking township	MO Jennings city	MO Rock township
MO Buchanan County	MO Joplin city	MO Rocky Fork township
MO Calverton Park village	MO Joplin township	MO Saginaw village
MO Campbell No. 1 township	MO Kickapoo township	MO Shoal Creek Drive village
MO Campbell No. 2 township	MO Kimmswick city	MO Shoal Creek township
MO Carl Junction city	MO Kinloch city	MO Shrewsbury city
MO Carroll township	MO Kirkwood city	MO Silver Creek village
MO Carterville city	MO Ladue city	MO Sioux township
MO Cass County	MO Lake St. Louis city	MO Sni-A-Bar township
MO Cedar township	MO Lake Tapawingo city	MO Spanish Lake township
MO Center township	MO Lake Waukomis city	MO Spencer Creek township
MO Charlack city	MO Lakeshire city	MO St. Ann city
MO Chesterfield city	MO Leawood village	MO St. Charles city
MO Chouteau township	MO Lee's Summit city	MO St. Ferdinand township
MO Christian County	MO Lemay township	MO St. George city
MO Clarkson Valley city	MO Lewis and Clark township	MO St. John city
MO Clay County	MO Liberty city	MO St. Joseph city
MO Clay township	MO Liberty township	MO St. Louis city
MO Claycomd village	MO Mac Kenzie village	MO St. Peters city
MO Clayton city	MO Manchester city	MO St. Peters township
MO Clayton township	MO Maplewood city	MO Sugar Creek city
MO Cliff Village village	MO Marlborough village	MO Sunset Hills city
MO Columbia city	MO Maryland Heights city	MO Sycamore Hills village
MO Columbia township	MO May township	MO Town and Country city
MO Concord township	MO Meramec township	MO Twin Groves township
MO Cool Valley city	MO Midland township	MO Twin Oaks village
MO Cottleville town	MO Mineral township	MO Unity Village village

MO University City city	NC Catawba County	ND Grand Forks County
MO Uplands Park village	NC Chapel Hill town	ND Grand Forks township
MO Valley Park city	NC China Grove town	ND Hay Creek township
MO Velda Village city	NC Clemmons village	ND Lincoln city
MO Velda Village Hills village	NC Concord city	ND Mandan city
MO Vinita Park city	NC Conover city	ND Mandan unorg.
MO Vinita Terrace village	NC Cramerton town	ND Morton County
MO Warson Woods city	NC Dallas town	ND Reed township
MO Washington township	NC Davidson County	ND West Fargo city
MO Wayne township	NC Durham County	NE Bellevue city
MO Weatherby Lake city	NC Edgecombe County	NE Bellevue No. 2 precinct
MO Webb City city	NC Elon College town	NE Benson precinct
MO Webster Groves city	NC Fletcher town	NE Boys Town village
MO Wellston city	NC Forsyth County	NE Chicago precinct
MO Wentzville township	NC Garner town	NE Covington precinct
MO Westwood village	NC Gaston County	NE Dakota County
MO Wilbur Park village	NC Gastonia city	NE Douglas County
MO Wilson township	NC Gibsonville town	NE Douglas precinct
MO Winchester city	NC Goldsboro city	NE Florence precinct
MO Windsor township	NC Graham city	NE Garfield precinct
MO Woodson Terrace city	NC Greenville city	NE Gilmore No. 1 precinct
MO Zumbahl township	NC Guilford County	NE Gilmore No. 2 precinct
MS Bay St. Louis city	NC Harnett County	NE Gilmore No. 3 precinct
MS Biloxi city	NC Haw River town	NE Grant precinct
MS Brandon city	NC Henderson County	NE Highland No. 1 precinct
MS Clinton city	NC Hickory city	NE Highland No. 2 precinct
MS DeSoto County	NC High Point city	NE Jefferson precinct
MS D'Iberville city	NC Hildebran town	NE La Platte precinct
MS Flowood town	NC Hope Mills town	NE La Vista city
MS Forrest County	NC Indian Trail town	NE Lancaster County
MS Gautier city	NC Jacksonville city	NE Lancaster precinct
MS Gulfport city	NC Jamestown town	NE McArdle precinct
MS Hancock County	NC Kannapolis city	NE Millard precinct
MS Harrison County	NC Landis town	NE Papillion city
MS Hattiesburg city	NC Leland town	NE Papillion No. 2 precinct
MS Hinds County	NC Long View town	NE Pawnee precinct
MS Horn Lake city	NC Lowell city	NE Ralston city
MS Jackson County	NC Matthews town	NE Richland No. 1 precinct
MS Lamar County	NC McAdenville town	NE Richland No. 2 precinct
MS Long Beach city	NC Mebane city	NE Richland No. 3 precinct
MS Madison city	NC Mecklenburg County	NE Sarpy County
MS Madison County	NC Mint Hill town	NE South Sioux City city
MS Moss Point city	NC Montreat town	NE Union precinct
MS Ocean Springs city	NC Mount Holly city	NE Yankee Hill precinct
MS Pascagoula city	NC Nash County	NH Amherst town
MS Pass Christian city	NC New Hanover County	NH Auburn town
MS Pearl city	NC Newton city	NH Bedford town
MS Petal city	NC Onslow County	NH Dover city
MS Rankin County	NC Orange County	NH Durham town
MS Richland city	NC Pineville town	NH Goffstown town
MS Ridgeland city	NC Pitt County	NH Hillsborough County
MS Southaven city	NC Randolph County	NH Hollis town
MS Waveland city	NC Ranlo town	NH Hooksett town
MT Billings city	NC Rocky Mount city	NH Hudson town
MT Cascade County	NC Rowan County	NH Litchfield town
MT Great Falls city	NC Rural Hall town	NH Londonderry town
MT Missoula city	NC Spring Lake town	NH Madbury town
MT Missoula County	NC Stallings town	NH Manchester city
MT Yellowstone County	NC Thomasville city	NH Merrimack County
NC Alamance County	NC Union County	NH Merrimack town
NC Apex town	NC Wake County	NH Nashua city
NC Archdale city	NC Walkertown town	NH New Castle town
NC Asheville city	NC Wayne County	NH Newington town
NC Belmont city	NC Weaverville town	NH Pelham town
NC Belville town	NC Wilmington city	NH Plaistow town
NC Bessemer City city	NC Winterville town	NH Portsmouth city
NC Biltmore Forest town	NC Woodfin town	NH Rochester city
NC Black Mountain town	NC Wrightsville Beach town	NH Rockingham County
NC Brookford town	ND Barnes township	NH Rollinsford town
NC Brunswick County	ND Bismarck city	NH Rye town
NC Buncombe County	ND Bismarck unorg.	NH Salem town
NC Burke County	ND Burleigh County	NH Somersworth city
NC Burlington city	ND Captain's Landing township	NH Strafford County
NC Cabarrus County	ND Cass County	NH Windham town
NC Carrboro town	ND Fargo city	NJ Aberdeen township
NC Cary town	ND Grand Forks city	NJ Absecon city

NJ Allendale borough	NJ Deal borough	NJ Hillsborough township
NJ Allenhurst borough	NJ Delanco township	NJ Hillsdale borough
NJ Alpha borough	NJ Delran township	NJ Hillside township
NJ Alpine borough	NJ Demarest borough	NJ Hi-Nella borough
NJ Asbury Park city	NJ Denville township	NJ Hoboken city
NJ Atlantic City city	NJ Deptford township	NJ Ho-Ho-Kus borough
NJ Atlantic County	NJ Dover town	NJ Holmdel township
NJ Atlantic Highlands borough	NJ Dover township	NJ Hopatcong borough
NJ Audubon borough	NJ Dumont borough	NJ Hopewell township
NJ Audubon Park borough	NJ Dunellen borough	NJ Howell township
NJ Avon-by-the-Sea borough	NJ East Brunswick township	NJ Hunterdon County
NJ Barrington borough	NJ East Greenwich township	NJ Interlaken borough
NJ Bay Head borough	NJ East Hanover township	NJ Irvington township
NJ Bayonne city	NJ East Newark borough	NJ Island Heights borough
NJ Beachwood borough	NJ East Orange city	NJ Jackson township
NJ Bedminster township	NJ East Rutherford borough	NJ Jamesburg borough
NJ Belleville township	NJ Eastampton township	NJ Jefferson township
NJ Bellmawr borough	NJ Eatontown borough	NJ Jersey City city
NJ Belmar borough	NJ Edgewater borough	NJ Keansburg borough
NJ Bergenfield borough	NJ Edgewater Park township	NJ Kearny town
NJ Berkeley Heights township	NJ Edison township	NJ Kenilworth borough
NJ Berkeley township	NJ Egg Harbor township	NJ Keyport borough
NJ Berlin borough	NJ Elizabeth city	NJ Kinnelon borough
NJ Berlin township	NJ Elk township	NJ Lakehurst borough
NJ Bernards township	NJ Elmwood Park borough	NJ Lakewood township
NJ Bernardsville borough	NJ Emerson borough	NJ Laurel Springs borough
NJ Beverly city	NJ Englewood city	NJ Lavallette borough
NJ Bloomfield township	NJ Englewood Cliffs borough	NJ Lawnside borough
NJ Bloomingdale borough	NJ Englishtown borough	NJ Lawrence township
NJ Bogota borough	NJ Essex Fells township	NJ Leonia borough
NJ Boonton town	NJ Evesham township	NJ Lincoln Park borough
NJ Boonton township	NJ Ewing township	NJ Linden city
NJ Bordentown city	NJ Fair Haven borough	NJ Lindenwold borough
NJ Bordentown township	NJ Fair Lawn borough	NJ Linwood city
NJ Bound Brook borough	NJ Fairfield township	NJ Little Falls township
NJ Bradley Beach borough	NJ Fairview borough	NJ Little Ferry borough
NJ Branchburg township	NJ Fanwood borough	NJ Little Silver borough
NJ Brick township	NJ Fieldsboro borough	NJ Livingston township
NJ Bridgewater township	NJ Florence township	NJ Loch Arbour village
NJ Brielle borough	NJ Florham Park borough	NJ Lodi borough
NJ Brigantine city	NJ Fort Lee borough	NJ Long Branch city
NJ Brooklawn borough	NJ Franklin Lakes borough	NJ Longport borough
NJ Buena borough	NJ Franklin township	NJ Lopatcong township
NJ Buena Vista township	NJ Freehold borough	NJ Lumberton township
NJ Burlington city	NJ Freehold township	NJ Lyndhurst township
NJ Burlington County	NJ Galloway township	NJ Madison borough
NJ Burlington township	NJ Garfield city	NJ Magnolia borough
NJ Butler borough	NJ Garwood borough	NJ Mahwah township
NJ Byram township	NJ Gibbsboro borough	NJ Manalapan township
NJ Caldwell Borough township	NJ Glassboro borough	NJ Manasquan borough
NJ Camden city	NJ Glen Ridge Borough township	NJ Manchester township
NJ Cape May County	NJ Glen Rock borough	NJ Mantoloking borough
NJ Carlstadt borough	NJ Gloucester City city	NJ Mantua township
NJ Carneys Point township	NJ Gloucester County	NJ Manville borough
NJ Carteret borough	NJ Gloucester township	NJ Maple Shade township
NJ Cedar Grove township	NJ Green Brook township	NJ Maplewood township
NJ Chatham borough	NJ Greenwich township	NJ Margate City city
NJ Chatham township	NJ Guttenberg town	NJ Marlboro township
NJ Cherry Hill township	NJ Hackensack city	NJ Matawan borough
NJ Chesilhurst borough	NJ Haddon Heights borough	NJ Maywood borough
NJ Chester township	NJ Haddon township	NJ Medford Lakes borough
NJ Chesterfield township	NJ Haddonfield borough	NJ Medford township
NJ Cinnaminson township	NJ Hainesport township	NJ Mendham borough
NJ City of Orange township	NJ Haledon borough	NJ Mendham township
NJ Clark township	NJ Hamilton township	NJ Mercer County
NJ Clayton borough	NJ Hanover township	NJ Merchantville borough
NJ Clementon borough	NJ Harding township	NJ Metuchen borough
NJ Cliffside Park borough	NJ Harrington Park borough	NJ Middlesex borough
NJ Clifton city	NJ Harrison town	NJ Middlesex County
NJ Closter borough	NJ Hasbrouck Heights borough	NJ Middletown township
NJ Collingswood borough	NJ Haworth borough	NJ Midland Park borough
NJ Colts Neck township	NJ Hawthorne borough	NJ Millburn township
NJ Commercial township	NJ Hazlet township	NJ Millstone borough
NJ Cranford township	NJ Helmetta borough	NJ Milltown borough
NJ Cresskill borough	NJ Highland Park borough	NJ Millville city
NJ Cumberland County	NJ Highlands borough	NJ Mine Hill township

NJ Monmouth Beach borough	NJ Pompton Lakes borough	NJ Verona township
NJ Monmouth County	NJ Prospect Park borough	NJ Victory Gardens borough
NJ Monroe township	NJ Rahway city	NJ Vineland city
NJ Montclair township	NJ Ramsey borough	NJ Voorhees township
NJ Montvale borough	NJ Randolph township	NJ Waldwick borough
NJ Montville township	NJ Raritan borough	NJ Wall township
NJ Moonachie borough	NJ Readington township	NJ Wallington borough
NJ Moorestown township	NJ Red Bank borough	NJ Wanaque borough
NJ Morris County	NJ Ridgefield borough	NJ Warren County
NJ Morris Plains borough	NJ Ridgefield Park village	NJ Warren township
NJ Morris township	NJ Ridgewood village	NJ Washington township
NJ Morristown town	NJ Ringwood borough	NJ Watchung borough
NJ Mount Arlington borough	NJ River Edge borough	NJ Waterford township
NJ Mount Ephraim borough	NJ River Vale township	NJ Wayne township
NJ Mount Holly township	NJ Riverdale borough	NJ Weehawken township
NJ Mount Laurel township	NJ Riverside township	NJ Wenonah borough
NJ Mount Olive township	NJ Riverton borough	NJ West Caldwell township
NJ Mountain Lakes borough	NJ Rochelle Park township	NJ West Deptford township
NJ Mountainside borough	NJ Rockaway borough	NJ West Long Branch borough
NJ National Park borough	NJ Rockaway township	NJ West New York town
NJ Neptune City borough	NJ Rockleigh borough	NJ West Orange township
NJ Neptune township	NJ Roseland borough	NJ West Paterson borough
NJ Netcong borough	NJ Roselle borough	NJ Westampton township
NJ New Brunswick city	NJ Roselle Park borough	NJ Westfield town
NJ New Milford borough	NJ Roxbury township	NJ Westville borough
NJ New Providence borough	NJ Rumson borough	NJ Westwood borough
NJ Newark city	NJ Runnemede borough	NJ Wharton borough
NJ Newfield borough	NJ Rutherford borough	NJ Willingboro township
NJ North Arlington borough	NJ Saddle Brook township	NJ Winfield township
NJ North Bergen township	NJ Saddle River borough	NJ Winslow township
NJ North Brunswick township	NJ Salem County	NJ Woodbridge township
NJ North Caldwell township	NJ Sayreville borough	NJ Woodbury city
NJ North Haledon borough	NJ Scotch Plains township	NJ Woodbury Heights borough
NJ North Plainfield borough	NJ Sea Bright borough	NJ Woodcliff Lake borough
NJ Northfield city	NJ Sea Girt borough	NJ Woodlynne borough
NJ Northvale borough	NJ Seaside Heights borough	NJ Wood-Ridge borough
NJ Norwood borough	NJ Seaside Park borough	NJ Wyckoff township
NJ Nutley township	NJ Secaucus town	NM Bernalillo County
NJ Oakland borough	NJ Shamong township	NM Corrales village
NJ Oaklyn borough	NJ Shrewsbury borough	NM Dona Ana County
NJ Ocean City city	NJ Shrewsbury township	NM Las Cruces city
NJ Ocean County	NJ Somerdale borough	NM Los Ranchos de Albuquerque village
NJ Ocean Gate borough	NJ Somers Point city	NM Mesilla town
NJ Ocean township	NJ Somerset County	NM Rio Rancho city
NJ Oceanport borough	NJ Somerville borough	NM Sandoval County
NJ Old Bridge township	NJ South Amboy city	NM Santa Fe city
NJ Old Tappan borough	NJ South Belmar borough	NM Santa Fe County
NJ Oradell borough	NJ South Bound Brook borough	NM Sunland Park city
NJ Palisades Park borough	NJ South Brunswick township	NY Albany city
NJ Palmyra borough	NJ South Hackensack township	NY Albany County
NJ Paramus borough	NJ South Orange Village township	NY Amherst town
NJ Park Ridge borough	NJ South Plainfield borough	NY Amityville village
NJ Parsippany-Troy Hills township	NJ South River borough	NY Ardsley village
NJ Passaic city	NJ South Toms River borough	NY Ashland town
NJ Passaic County	NJ Spotswood borough	NY Atlantic Beach village
NJ Passaic township	NJ Spring Lake borough	NY Babylon town
NJ Paterson city	NJ Spring Lake Heights borough	NY Babylon village
NJ Paulsboro borough	NJ Springfield township	NY Baldwinville village
NJ Pennington borough	NJ Stanhope borough	NY Ballston town
NJ Penns Grove borough	NJ Stratford borough	NY Barker town
NJ Pennsauken township	NJ Summit city	NY Baxter Estates village
NJ Pennsville township	NJ Sussex County	NY Bayville village
NJ Pequannock township	NJ Tabernacle township	NY Beacon city
NJ Perth Amboy city	NJ Tavistock borough	NY Bedford town
NJ Phillipsburg town	NJ Teaneck township	NY Belle Terre village
NJ Pine Beach borough	NJ Tenaflly borough	NY Bellerose village
NJ Pine Hill borough	NJ Teterboro borough	NY Bellport village
NJ Pine Valley borough	NJ Tinton Falls borough	NY Bethlehem town
NJ Piscataway township	NJ Totowa borough	NY Big Flats town
NJ Pitman borough	NJ Trenton city	NY Binghamton city
NJ Pittsgrove township	NJ Union Beach borough	NY Binghamton town
NJ Plainfield city	NJ Union City city	NY Blasdel village
NJ Pleasantville city	NJ Union township	NY Boston town
NJ Pohatcong township	NJ Upper Saddle River borough	NY Briarcliff Manor village
NJ Point Pleasant Beach borough	NJ Upper township	NY Brighton town
NJ Point Pleasant borough	NJ Ventnor City city	NY Brightwaters village

NY	Bronxville village	NY	Grand View-on-Hudson village	NY	Menands village
NY	Brookhaven town	NY	Great Neck Estates village	NY	Mill Neck village
NY	Brookville village	NY	Great Neck Plaza village	NY	Mineola village
NY	Broome County	NY	Great Neck village	NY	Minoa village
NY	Brunswick town	NY	Greece town	NY	Monroe County
NY	Buchanan village	NY	Green Island village	NY	Montebello village
NY	Buffalo city	NY	Greenburgh town	NY	Montgomery town
NY	Camillus town	NY	Guilderland town	NY	Moreau town
NY	Camillus village	NY	Halfmoon town	NY	Mount Kisco village
NY	Carmel town	NY	Hamburg town	NY	Mount Pleasant town
NY	Cayuga Heights village	NY	Hamburg village	NY	Mount Vernon city
NY	Cedarhurst village	NY	Harrison village	NY	Munsey Park village
NY	Charlton town	NY	Hastings-on-Hudson village	NY	Muttontown village
NY	Cheektowaga town	NY	Haverstraw town	NY	New Castle town
NY	Chemung County	NY	Haverstraw village	NY	New Hartford town
NY	Chenango town	NY	Hempstead town	NY	New Hartford village
NY	Chestnut Ridge village	NY	Hempstead village	NY	New Hempstead village
NY	Chili town	NY	Henrietta town	NY	New Hyde Park village
NY	Cicero town	NY	Herkimer County	NY	New Rochelle city
NY	Clarence town	NY	Hewlett Bay Park village	NY	New Square village
NY	Clarkstown town	NY	Hewlett Harbor village	NY	New Windsor town
NY	Clay town	NY	Hewlett Neck village	NY	New York Mills village
NY	Clayville village	NY	Hillburn village	NY	Newburgh city
NY	Clifton Park town	NY	Horseheads town	NY	Newburgh town
NY	Clinton village	NY	Horseheads village	NY	Niagara County
NY	Cohoes city	NY	Hudson Falls village	NY	Niagara Falls city
NY	Colonie town	NY	Huntington Bay village	NY	Niagara town
NY	Colonie village	NY	Huntington town	NY	Niskayuna town
NY	Conklin town	NY	Hyde Park town	NY	North Castle town
NY	Cornwall on Hudson village	NY	Irondequoit town	NY	North Greenbush town
NY	Cornwall town	NY	Irvington village	NY	North Hempstead town
NY	Cortlandt town	NY	Island Park village	NY	North Hills village
NY	Croton-on-Hudson village	NY	Islandia village	NY	North Syracuse village
NY	De Witt town	NY	Islip town	NY	North Tarrytown village
NY	Deerfield town	NY	Ithaca city	NY	North Tonawanda city
NY	Depew village	NY	Ithaca town	NY	Northport village
NY	Dickinson town	NY	Johnson City village	NY	Nyack village
NY	Dobbs Ferry village	NY	Kenmore village	NY	Ogden town
NY	Dryden town	NY	Kensington village	NY	Old Brookville village
NY	Dutchess County	NY	Kent town	NY	Old Westbury village
NY	East Fishkill town	NY	Kings Point village	NY	Oneida County
NY	East Greenbush town	NY	Kingsbury town	NY	Onondaga County
NY	East Hills village	NY	Kirkland town	NY	Onondaga town
NY	East Rochester village	NY	Kirkwood town	NY	Orange County
NY	East Rockaway village	NY	La Grange town	NY	Orangetown town
NY	East Syracuse village	NY	Lackawanna city	NY	Orchard Park town
NY	East Williston village	NY	LaFayette town	NY	Orchard Park village
NY	Eastchester town	NY	Lake Grove village	NY	Oriskany village
NY	Elma town	NY	Lake Success village	NY	Ossining town
NY	Elmira city	NY	Lancaster town	NY	Ossining village
NY	Elmira Heights village	NY	Lancaster village	NY	Oswego County
NY	Elmira town	NY	Lansing town	NY	Owego town
NY	Elmsford village	NY	Lansing village	NY	Oyster Bay town
NY	Endicott village	NY	Larchmont village	NY	Paris town
NY	Erie County	NY	Lattingtown village	NY	Patchogue village
NY	Evans town	NY	Lawrence village	NY	Patterson town
NY	Fairport village	NY	Lee town	NY	Peekskill city
NY	Farmingdale village	NY	Lewiston town	NY	Pelham Manor village
NY	Fayetteville village	NY	Lewiston village	NY	Pelham town
NY	Fenton town	NY	Lindenhurst village	NY	Pelham village
NY	Fishkill town	NY	Liverpool village	NY	Pendleton town
NY	Fishkill village	NY	Lloyd Harbor village	NY	Penfield town
NY	Floral Park village	NY	Lloyd town	NY	Perinton town
NY	Flower Hill village	NY	Long Beach city	NY	Philipstown town
NY	Floyd town	NY	Lynbrook village	NY	Phoenix village
NY	Fort Edward town	NY	Lysander town	NY	Piermont village
NY	Fort Edward village	NY	Malta town	NY	Pittsford town
NY	Frankfort town	NY	Malverne village	NY	Pittsford village
NY	Freeport village	NY	Mamaroneck town	NY	Plandome Heights village
NY	Garden City village	NY	Mamaroneck village	NY	Plandome Manor village
NY	Gates town	NY	Manlius town	NY	Plandome village
NY	Geddes town	NY	Manlius village	NY	Pleasant Valley town
NY	Glen Cove city	NY	Manorhaven village	NY	Pleasantville village
NY	Glens Falls city	NY	Marcy town	NY	Poestenkill town
NY	Glenville town	NY	Massapequa Park village	NY	Pomona village
NY	Grand Island town	NY	Matinecock village	NY	Poospatuck Reservation

NY Poquott village	NY Wappinger town	OH Brown township
NY Port Chester village	NY Wappingers Falls village	OH Brownhelm township
NY Port Dickinson village	NY Warren County	OH Brunswick city
NY Port Jefferson village	NY Washington County	OH Brunswick Hills township
NY Port Washington North village	NY Waterford town	OH Butler County
NY Poughkeepsie city	NY Waterford village	OH Butler township
NY Poughkeepsie town	NY Watervliet city	OH Campbell city
NY Pound Ridge town	NY Webster town	OH Canfield city
NY Putnam County	NY Webster village	OH Canfield township
NY Putnam Valley town	NY Wesley Hills village	OH Canton city
NY Queensbury town	NY West Haverstraw village	OH Canton township
NY Ramapo town	NY West Seneca town	OH Carlisle township
NY Rensselaer city	NY Westbury village	OH Carlisle village
NY Rensselaer County	NY Westchester County	OH Centerville city
NY Riverhead town	NY Western town	OH Chagrin Falls township
NY Rochester city	NY Wheatfield town	OH Chagrin Falls village
NY Rockville Centre village	NY White Plains city	OH Champion township
NY Rome city	NY Whitesboro village	OH Chesapeake village
NY Roslyn Estates village	NY Whitestown town	OH Cheviot city
NY Roslyn Harbor village	NY Williamsville village	OH Chippewa township
NY Roslyn village	NY Williston Park village	OH Cincinnati city
NY Rotterdam town	NY Woodsburgh village	OH Clark County
NY Russell Gardens village	NY Yonkers city	OH Clear Creek township
NY Rye Brook village	NY Yorktown town	OH Clermont County
NY Rye city	NY Yorkville village	OH Cleveland city
NY Rye town	OH Addyston village	OH Cleveland Heights city
NY Saddle Rock village	OH Allen County	OH Cleves village
NY Salina town	OH Allen township	OH Clinton township
NY Sands Point village	OH Amberley village	OH Coal Grove village
NY Saratoga County	OH Amelia village	OH Coitsville township
NY Scarsdale town	OH American township	OH Colerain township
NY Scarsdale village	OH Amherst city	OH Columbia township
NY Schaghticoke town	OH Amherst township	OH Concord township
NY Schenectady city	OH Anderson township	OH Copley township
NY Schenectady County	OH Arlington Heights village	OH Coventry township
NY Schodack town	OH Auglaize County	OH Cridersville village
NY Schroepel town	OH Aurora city	OH Cross Creek township
NY Schuyler town	OH Austintown township	OH Cuyahoga County
NY Scotia village	OH Avon city	OH Cuyahoga Falls city
NY Sea Cliff village	OH Avon Lake city	OH Cuyahoga Heights village
NY Shoreham village	OH Bainbridge township	OH Deer Park city
NY Sloan village	OH Barberton city	OH Deerfield township
NY Sloatsburg village	OH Batavia township	OH Delaware County
NY Smithtown town	OH Bath township	OH Delhi township
NY Solvay village	OH Bay Village city	OH Doylestown village
NY Somers town	OH Beachwood city	OH Dublin city
NY South Floral Park village	OH Beaver township	OH Duchouquet township
NY South Glens Falls village	OH Beavercreek city	OH East Cleveland city
NY South Nyack village	OH Beavercreek township	OH Eastlake city
NY Southampton town	OH Bedford city	OH Eaton township
NY Southport town	OH Bedford Heights city	OH Elmwood Place village
NY Spencerport village	OH Bellaire city	OH Elyria city
NY Spring Valley village	OH Bellbrook city	OH Elyria township
NY Stewart Manor village	OH Belmont County	OH Englewood city
NY Stony Point town	OH Belpre city	OH Erie County
NY Suffern village	OH Belpre township	OH Etna township
NY Suffolk County	OH Bentleyville village	OH Euclid city
NY Syracuse city	OH Berea city	OH Evendale village
NY Tarrytown village	OH Bethel township	OH Fairborn city
NY Thomaston village	OH Bexley city	OH Fairfax village
NY Tioga County	OH Blendon township	OH Fairfield city
NY Tompkins County	OH Blue Ash city	OH Fairfield County
NY Tonawanda city	OH Boardman township	OH Fairfield township
NY Tonawanda town	OH Brady Lake village	OH Fairlawn city
NY Troy city	OH Bratenahl village	OH Fairport Harbor village
NY Tuckahoe village	OH Brecksville city	OH Fairview Park city
NY Ulster County	OH Brice village	OH Fayette township
NY Union town	OH Bridgeport village	OH Forest Park city
NY Upper Brookville village	OH Brilliant village	OH Fort Shawnee village
NY Upper Nyack village	OH Brimfield township	OH Franklin city
NY Utica city	OH Broadview Heights city	OH Franklin County
NY Valley Stream village	OH Brook Park city	OH Franklin township
NY Van Buren town	OH Brookfield township	OH Gahanna city
NY Vestal town	OH Brooklyn city	OH Garfield Heights city
NY Veteran town	OH Brooklyn Heights village	OH Geauga County
NY Village of the Branch village	OH Brookside village	OH Genoa township

OH German township	OH Marble Cliff village	OH Pease township
OH Girard city	OH Mariemont village	OH Pepper Pike city
OH Glendale village	OH Martins Ferry city	OH Perry township
OH Glenwillow village	OH Mason city	OH Perrysburg city
OH Golf Manor village	OH Massillon city	OH Perrysburg city
OH Goshen township	OH Maumee city	OH Perrysburg township
OH Grand River village	OH Mayfield Heights city	OH Pierce township
OH Grandview Heights city	OH Mayfield village	OH Plain township
OH Green township	OH McDonald village	OH Pleasant township
OH Green village	OH Mead township	OH Poland township
OH Greene County	OH Medina County	OH Poland village
OH Greenhills village	OH Mentor city	OH Portage County
OH Grove City city	OH Mentor-on-the-Lake city	OH Powell village
OH Groveport village	OH Meyers Lake village	OH Prairie township
OH Hamilton city	OH Miami County	OH Proctorville village
OH Hamilton County	OH Miami township	OH Pultney township
OH Hamilton township	OH Miamisburg city	OH Randolph township
OH Hanging Rock village	OH Middleburg Heights city	OH Ravenna city
OH Hanover township	OH Middletown city	OH Ravenna township
OH Harbor View village	OH Mifflin township	OH Reading city
OH Harrison township	OH Milford city	OH Reminderville village
OH Hartville village	OH Millbury village	OH Reynoldsburg city
OH Heath city	OH Millville village	OH Richfield township
OH Highland Heights city	OH Minerva Park village	OH Richfield village
OH Hilliard city	OH Mingo Junction city	OH Richland County
OH Hills and Dales village	OH Mogadore village	OH Richmond Heights city
OH Hinckley township	OH Monclova township	OH Riveredge township
OH Holland village	OH Monroe township	OH Riverlea village
OH Howland township	OH Monroe village	OH Riverside village
OH Hubbard city	OH Montgomery city	OH Rocky River city
OH Hubbard township	OH Montgomery County	OH Rome township
OH Huber Heights city	OH Moorefield township	OH Ross township
OH Hudson township	OH Moraine city	OH Rossford city
OH Hudson village	OH Moreland Hills village	OH Russell township
OH Independence city	OH Mount Healthy city	OH Russia township
OH Ironton city	OH Munroe Falls village	OH Sagamore Hills township
OH Island Creek township	OH New Miami village	OH Seven Hills city
OH Jackson township	OH New Middletown village	OH Shadyside village
OH Jefferson County	OH New Rome village	OH Shaker Heights city
OH Jefferson township	OH Newark city	OH Sharon township
OH Jerome township	OH Newark township	OH Sharonville city
OH Kent city	OH Newburgh Heights village	OH Shawnee Hills village
OH Kettering city	OH Newton township	OH Shawnee township
OH Kirtland city	OH Newtown village	OH Sheffield Lake city
OH Lake County	OH Niles city	OH Sheffield township
OH Lake township	OH Nimishillen township	OH Sheffield village
OH Lakeline village	OH North Bend village	OH Silver Lake village
OH Lakemore village	OH North Canton city	OH Silvertown city
OH Lakewood city	OH North College Hill city	OH Solon city
OH Lawrence County	OH North Olmsted city	OH South Amherst village
OH Lawrence township	OH North Randall village	OH South Euclid city
OH Lemon township	OH North Ridgeville city	OH South Point village
OH Lexington village	OH North Royalton city	OH South Russell village
OH Liberty township	OH Northfield Center township	OH Springboro city
OH Licking County	OH Northfield village	OH Springdale city
OH Licking township	OH Northwood city	OH Springfield city
OH Lima city	OH Norton city	OH Springfield township
OH Lima township	OH Norwich township	OH St. Bernard city
OH Lincoln Heights city	OH Norwood city	OH St. Clair township
OH Linndale village	OH Oakwood city	OH Stark County
OH Lockland village	OH Oakwood village	OH Steubenville city
OH Lorain city	OH Obetz village	OH Steubenville township
OH Lorain County	OH Ohio township	OH Stow city
OH Louisville city	OH Olmsted Falls city	OH Strongsville city
OH Loveland city	OH Olmsted township	OH Struthers city
OH Lowellville village	OH Ontario village	OH Suffield township
OH Lucas County	OH Orange township	OH Sugar Bush Knolls village
OH Lyndhurst city	OH Orange village	OH Sugar Creek township
OH Macedonia city	OH Oregon city	OH Summit County
OH Mad River township	OH Ottawa County	OH Sycamore township
OH Madeira city	OH Ottawa Hills village	OH Sylvania city
OH Madison township	OH Painesville city	OH Sylvania township
OH Mahoning County	OH Painesville township	OH Symmes township
OH Maineville village	OH Palmyra township	OH Tallmadge city
OH Mansfield city	OH Parma city	OH Terrace Park village
OH Maple Heights city	OH Parma Heights city	OH The Village of Indian Hill city

OH Timberlake village	OK Logan County	PA Berks County
OH Trenton city	OK Midwest City city	PA Bern township
OH Trotwood city	OK Moffett town	PA Bethel Park borough
OH Troy township	OK Moore city	PA Bethel township
OH Trumbull County	OK Mustang city	PA Bethlehem city
OH Truro township	OK Nichols Hills city	PA Bethlehem township
OH Turtle Creek township	OK Nicoma Park city	PA Big Beaver borough
OH Tuscarawas township	OK Norman city	PA Birdsboro borough
OH Twinsburg city	OK Oklahoma County	PA Birmingham township
OH Twinsburg township	OK Osage County	PA Blair County
OH Union city	OK Pottawatomie County	PA Blair township
OH Union County	OK Rogers County	PA Blakely borough
OH Union township	OK Sand Springs city	PA Blawnox borough
OH University Heights city	OK Sequoyah County	PA Boyertown borough
OH Upper Arlington city	OK Smith Village town	PA Brackenridge borough
OH Upper township	OK Spencer city	PA Braddock borough
OH Urbancrest village	OK The Village city	PA Braddock Hills borough
OH Valley View village	OK Tulsa County	PA Bradfordwoods borough
OH Valleyview village	OK Valley Brook town	PA Brentwood borough
OH Vandalia city	OK Wagoner County	PA Bridgeport borough
OH Vermilion city	OK Warr Acres city	PA Bridgeville borough
OH Vermilion township	OK Woodlawn Park town	PA Bridgewater borough
OH Violet township	OK Yukon city	PA Brighton township
OH Wadsworth city	OR Central Point city	PA Bristol borough
OH Wadsworth township	OR Columbia County	PA Bristol township
OH Waite Hill village	OR Durham city	PA Brookhaven borough
OH Walbridge village	OR Jackson County	PA Brownstown borough
OH Walton Hills village	OR Keizer city	PA Brownsville borough
OH Warren city	OR King City city	PA Brownsville township
OH Warren County	OR Lane County	PA Bryn Athyn borough
OH Warren township	OR Marion County	PA Buckingham township
OH Warrensville Heights city	OR Maywood Park city	PA Bucks County
OH Warrensville township	OR Medford city	PA California borough
OH Washington County	OR Phoenix city	PA Caln township
OH Washington township	OR Polk County	PA Cambria County
OH Wayne County	OR Rainier city	PA Camp Hill borough
OH Wayne township	OR Springfield city	PA Canonsburg borough
OH Weathersfield township	OR Troutdale city	PA Canton township
OH Wells township	OR Tualatin city	PA Carbondale city
OH West Carrollton City city	OR Wood Village city	PA Carbondale township
OH West Milton village	PA Abington township	PA Carnegie borough
OH Westerville city	PA Adamsburg borough	PA Carroll township
OH Westlake city	PA Alburtis borough	PA Castle Shannon borough
OH Whitehall city	PA Aldan borough	PA Catasauqua borough
OH Whitewater township	PA Aleppo township	PA Cecil township
OH Wickliffe city	PA Aliquippa city	PA Center township
OH Willoughby city	PA Allegheny County	PA Centre County
OH Willoughby Hills city	PA Allegheny township	PA Chalfant borough
OH Willowick city	PA Allen township	PA Chalfont borough
OH Wintersville village	PA Allenport borough	PA Charleroi borough
OH Wood County	PA Alsace township	PA Charlestown township
OH Woodlawn village	PA Altoona city	PA Chartiers township
OH Woodmere village	PA Ambler borough	PA Cheltenham township
OH Worthington city	PA Ambridge borough	PA Chester city
OH Wyoming city	PA Amwell township	PA Chester County
OH Youngstown city	PA Antis township	PA Chester Heights borough
OK Arkoma town	PA Antrim township	PA Chester township
OK Bethany city	PA Archbald borough	PA Cheswick borough
OK Bixby city	PA Arnold city	PA Chippewa township
OK Broken Arrow city	PA Ashley borough	PA Churchill borough
OK Canadian County	PA Aspinwall borough	PA Clairton city
OK Catoosa city	PA Aston township	PA Clarks Green borough
OK Choctaw city	PA Avalon borough	PA Clarks Summit borough
OK Cleveland County	PA Avoca borough	PA Clifton Heights borough
OK Comanche County	PA Baden borough	PA Coal Center borough
OK Creek County	PA Baldwin borough	PA Coatesville city
OK Del City city	PA Baldwin township	PA Colebrookdale township
OK Edmond city	PA Beaver borough	PA College township
OK Forest Park town	PA Beaver County	PA Collegeville borough
OK Hall Park town	PA Beaver Falls city	PA Collier township
OK Harrah town	PA Bell Acres borough	PA Collingdale borough
OK Jenks city	PA Belle Vernon borough	PA Columbia borough
OK Jones town	PA Bellevue borough	PA Colwyn borough
OK Lake Aluma town	PA Ben Avon borough	PA Concord township
OK Lawton city	PA Ben Avon Heights borough	PA Conemaugh township
OK Le Flore County	PA Bensalem township	PA Conestoga township



PA Conewago township	PA Emmaus borough	PA Hummelstown borough
PA Conshohocken borough	PA Emsworth borough	PA Hunker borough
PA Conway borough	PA Erie city	PA Indiana township
PA Coplay borough	PA Erie County	PA Ingram borough
PA Coraopolis borough	PA Etna borough	PA Irwin borough
PA Courtdale borough	PA Exeter borough	PA Ivyland borough
PA Crafton borough	PA Exeter township	PA Jackson township
PA Crescent township	PA Export borough	PA Jacobus borough
PA Cumberland County	PA Fairfield township	PA Jeannette city
PA Cumru township	PA Fairview township	PA Jefferson borough
PA Daisytown borough	PA Fallowfield township	PA Jenkins township
PA Dale borough	PA Falls township	PA Jenkintown borough
PA Dallas borough	PA Fallston borough	PA Jermyn borough
PA Dallas township	PA Farrell city	PA Jessup borough
PA Dallastown borough	PA Fayette City borough	PA Johnstown city
PA Darby borough	PA Fayette County	PA Juniata township
PA Darby township	PA Fell township	PA Kenhorst borough
PA Daugherty township	PA Ferguson township	PA Kennedy township
PA Dauphin County	PA Ferndale borough	PA Kilbuck township
PA Delaware County	PA Findlay township	PA Kingston borough
PA Delmont borough	PA Finleyville borough	PA Kingston township
PA Derry township	PA Folcroft borough	PA Koppel borough
PA Dickson City borough	PA Forest Hills borough	PA Lackawanna County
PA Donora borough	PA Forks township	PA Laflin borough
PA Dormont borough	PA Forty Fort borough	PA Lancaster city
PA Douglass township	PA Forward township	PA Lancaster County
PA Dover borough	PA Fountain Hill borough	PA Lancaster township
PA Dover township	PA Fox Chapel borough	PA Langhorne borough
PA Downingtown borough	PA Franconia township	PA Langhorne Manor borough
PA Doylestown borough	PA Franklin borough	PA Lansdale borough
PA Doylestown township	PA Franklin County	PA Lansdowne borough
PA Dravosburg borough	PA Franklin Park borough	PA Larksville borough
PA Duboistown borough	PA Franklin township	PA Laurel Run borough
PA Duncansville borough	PA Frankstown township	PA Laureldale borough
PA Dunlevy borough	PA Frazer township	PA Lawrence County
PA Dunmore borough	PA Freedom borough	PA Lawrence Park township
PA Dupont borough	PA Freemansburg borough	PA Lebanon County
PA Duquesne city	PA Geistown borough	PA Leesport borough
PA Duryea borough	PA Glassport borough	PA Leet township
PA East Allen township	PA Glendon borough	PA Leetsdale borough
PA East Bradford township	PA Glenfield borough	PA Lehigh County
PA East Brandywine township	PA Glenolden borough	PA Lehman township
PA East Caln township	PA Green Tree borough	PA Lemoyne borough
PA East Conemaugh borough	PA Greensburg city	PA Liberty borough
PA East Coventry township	PA Hallam borough	PA Limerick township
PA East Deer township	PA Hampden township	PA Lincoln borough
PA East Fallowfield township	PA Hampton township	PA Lititz borough
PA East Goshen township	PA Hanover township	PA Logan township
PA East Hempfield township	PA Harborcreek township	PA Loganville borough
PA East Lampeter township	PA Harmar township	PA London Britain township
PA East Lansdowne borough	PA Harmony township	PA Londonderry township
PA East McKeesport borough	PA Harris township	PA Lorain borough
PA East Norriton township	PA Harrisburg city	PA Lower Allen township
PA East Pennsboro township	PA Harrison township	PA Lower Alsace township
PA East Petersburg borough	PA Harveys Lake borough	PA Lower Burrell city
PA East Pikeland township	PA Hatboro borough	PA Lower Chichester township
PA East Pittsburgh borough	PA Hatfield borough	PA Lower Frederick township
PA East Rochester borough	PA Hatfield township	PA Lower Gwynedd township
PA East Taylor township	PA Haverford township	PA Lower Heidelberg township
PA East Vincent township	PA Haysville borough	PA Lower Macungie township
PA East Washington borough	PA Heidelberg borough	PA Lower Makefield township
PA East Whiteland township	PA Hellam township	PA Lower Merion township
PA Easton city	PA Hellertown borough	PA Lower Moreland township
PA Easttown township	PA Hempfield township	PA Lower Nazareth township
PA Eastvale borough	PA Hepburn township	PA Lower Paxton township
PA Economy borough	PA Hermitage city	PA Lower Pottsgrove township
PA Eddystone borough	PA Highspire borough	PA Lower Providence township
PA Edgewood borough	PA Hilltown township	PA Lower Salford township
PA Edgeworth borough	PA Hollidaysburg borough	PA Lower Saucon township
PA Edgmont township	PA Homestead borough	PA Lower Southampton township
PA Edwardsville borough	PA Homewood borough	PA Lower Swatara township
PA Elco borough	PA Hopewell township	PA Lower Yoder township
PA Elizabeth borough	PA Horsham township	PA Loyalsock township
PA Elizabeth township	PA Houston borough	PA Luzerne borough
PA Ellport borough	PA Hughestown borough	PA Luzerne County
PA Ellwood City borough	PA Hulmeville borough	PA Luzerne township

PA Lycoming County	PA North Franklin township	PA Rostraver township
PA Lycoming township	PA North Huntingdon township	PA Royalton borough
PA Macungie borough	PA North Irwin borough	PA Royersford borough
PA Madison borough	PA North Londonderry township	PA Rutledge borough
PA Maiden creek township	PA North Sewickley township	PA Salem township
PA Malvern borough	PA North Strabane township	PA Salisbury township
PA Manchester township	PA North Versailles township	PA Scalp Level borough
PA Manheim township	PA North Wales borough	PA Schuylkill township
PA Manor borough	PA North Whitehall township	PA Schwenksville borough
PA Manor township	PA North York borough	PA Scott township
PA Marcus Hook borough	PA Northampton borough	PA Scranton city
PA Marple township	PA Northampton County	PA Sewickley borough
PA Marshall township	PA Northampton township	PA Sewickley Heights borough
PA Marysville borough	PA Norwood borough	PA Sewickley Hills borough
PA Mayfield borough	PA Oakmont borough	PA Sewickley township
PA McCandless township	PA O'Hara township	PA Shaler township
PA McKean township	PA Ohio township	PA Sharon city
PA McKees Rocks borough	PA Old Forge borough	PA Sharon Hill borough
PA McKeesport city	PA Old Lycoming township	PA Sharpsburg borough
PA Mechanicsburg borough	PA Olyphant borough	PA Sharpsville borough
PA Media borough	PA Ontelaunee township	PA Shenango township
PA Mercer County	PA Osborne borough	PA Shillington borough
PA Middle Taylor township	PA Paint borough	PA Shiremanstown borough
PA Middletown borough	PA Paint township	PA Silver Spring township
PA Middletown township	PA Palmer township	PA Sinking Spring borough
PA Millbourne borough	PA Palmyra borough	PA Skippack township
PA Millcreek township	PA Parkside borough	PA Somers County
PA Millersville borough	PA Patterson Heights borough	PA Souderton borough
PA Millvale borough	PA Patterson township	PA South Abington township
PA Modena borough	PA Patton township	PA South Coatesville borough
PA Mohnton borough	PA Paxtang borough	PA South Fayette township
PA Monaca borough	PA Penbrook borough	PA South Greensburg borough
PA Monessen city	PA Penn borough	PA South Hanover township
PA Monongahela city	PA Penn Hills township	PA South Heidelberg township
PA Monroe township	PA Penn township	PA South Heights borough
PA Montgomery County	PA Penndel borough	PA South Huntingdon township
PA Montgomery township	PA Pennsbury Village borough	PA South Park township
PA Montoursville borough	PA Pequea township	PA South Pymatuning township
PA Moon township	PA Perkiomen township	PA South Strabane township
PA Moosic borough	PA Perry County	PA South Whitehall township
PA Morrisville borough	PA Perry township	PA South Williamsport borough
PA Morton borough	PA Peters township	PA Southmont borough
PA Mount Lebanon township	PA Phoenixville borough	PA Southwest Greensburg borough
PA Mount Oliver borough	PA Pine township	PA Speers borough
PA Mount Penn borough	PA Pitcairn borough	PA Spring City borough
PA Mountville borough	PA Pittsburgh city	PA Spring Garden township
PA Muhlenberg township	PA Pittston city	PA Spring township
PA Munhall borough	PA Pittston township	PA Springdale borough
PA Municipality of Monroeville borough	PA Plains township	PA Springdale township
PA Municipality of Murrysburg borough	PA Pleasant Hills borough	PA Springettsbury township
PA Nanticoke city	PA Plum borough	PA Springfield township
PA Narberth borough	PA Plymouth borough	PA St. Lawrence borough
PA Nether Providence township	PA Plymouth township	PA State College borough
PA Neville township	PA Port Vue borough	PA Steelton borough
PA New Brighton borough	PA Potter township	PA Stockdale borough
PA New Britain borough	PA Pottstown borough	PA Stonycreek township
PA New Britain township	PA Pringle borough	PA Stowe township
PA New Cumberland borough	PA Prospect Park borough	PA Sugar Notch borough
PA New Eagle borough	PA Pulaski township	PA Summit township
PA New Galilee borough	PA Radnor township	PA Susquehanna township
PA New Garden township	PA Rankin borough	PA Sutersville borough
PA New Hanover township	PA Ransom township	PA Swarthmore borough
PA New Kensington city	PA Reading city	PA Swatara township
PA New Sewickley township	PA Red Lion borough	PA Swissvale borough
PA New Stanton borough	PA Reserve township	PA Swoyersville borough
PA Newell borough	PA Richland township	PA Tarentum borough
PA Newport township	PA Ridley Park borough	PA Taylor borough
PA Newton township	PA Ridley township	PA Telford borough
PA Newtown borough	PA Robinson township	PA Temple borough
PA Newtown township	PA Rochester borough	PA Thornburg borough
PA Norristown borough	PA Rochester township	PA Thornbury township
PA North Belle Vernon borough	PA Rockledge borough	PA Throop borough
PA North Braddock borough	PA Roscoe borough	PA Tinicum township
PA North Catasauqua borough	PA Rose Valley borough	PA Towamencin township
PA North Charleroi borough	PA Ross township	PA Trafford borough
PA North Coventry township	PA Rosslyn Farms borough	PA Trainer borough

PA Trappe borough	PA Whitehall township	RI East Providence city
PA Tredyffrin township	PA Whitemarsh township	RI Glocester town
PA Tullytown borough	PA Whitpain township	RI Jamestown town
PA Turtle Creek borough	PA Wilkes-Barre city	RI Johnston town
PA Union township	PA Wilkes-Barre township	RI Lincoln town
PA Upland borough	PA Wilkins township	RI Middletown town
PA Upper Allen township	PA Wilkesburg borough	RI Newport city
PA Upper Chichester township	PA Williams township	RI Newport County
PA Upper Darby township	PA Williamsport city	RI North Kingstown town
PA Upper Dublin township	PA Willistown township	RI North Providence town
PA Upper Gwynedd township	PA Wilmerding borough	RI North Smithfield town
PA Upper Leacock township	PA Wilson borough	RI Pawtucket city
PA Upper Macungie township	PA Windber borough	RI Portsmouth town
PA Upper Makefield township	PA Windsor borough	RI Providence city
PA Upper Merion township	PA Windsor township	RI Providence County
PA Upper Milford township	PA Worcester township	RI Scituate town
PA Upper Moreland township	PA Wormleysburg borough	RI Smithfield town
PA Upper Pottsgrove township	PA Wrightsville borough	RI Tiverton town
PA Upper Providence township	PA Wyoming borough	RI Warren town
PA Upper Saucon township	PA Wyomissing borough	RI Warwick city
PA Upper Southampton township	PA Wyomissing Hills borough	RI Washington County
PA Upper St. Clair township	PA Yardley borough	RI West Greenwich town
PA Upper Yoder township	PA Yatesville borough	RI West Warwick town
PA Uwchlan township	PA Yeadon borough	RI Woonsocket city
PA Valley township	PA Yoe borough	SC Aiken city
PA Vanport township	PA York city	SC Aiken County
PA Verona borough	PA York County	SC Anderson city
PA Versailles borough	PA York township	SC Anderson County
PA Wall borough	PA Youngwood borough	SC Arcadia Lakes town
PA Warminster township	PR Aibonita	SC Berkeley County
PA Warrington township	PR Anasco	SC Burnetown town
PA Warrior Run borough	PR Aquada	SC Cayce city
PA Warwick township	PR Aquadilla	SC Charleston city
PA Washington city	PR Aquas Buenas	SC Charleston County
PA Washington County	PR Arecibo	SC City View town
PA Washington township	PR Bayamon	SC Columbia city
PA Wayne township	PR Cabo Rojo	SC Cowpens town
PA Wernersville borough	PR Caguas	SC Darlington County
PA Wesleyville borough	PR Camuy	SC Dorchester County
PA West Bradford township	PR Canovanas	SC Edgefield County
PA West Brownsville borough	PR Catano	SC Florence city
PA West Chester borough	PR Cayey	SC Florence County
PA West Conshohocken borough	PR Cidra	SC Folly Beach city
PA West Deer township	PR Dorado	SC Forest Acres city
PA West Earl township	PR Guaynabo	SC Fort Mill town
PA West Easton borough	PR Gurabo	SC Georgetown County
PA West Elizabeth borough	PR Hatillo	SC Goose Creek city
PA West Fairview borough	PR Hormigueros	SC Hanahan city
PA West Goshen township	PR Humacao	SC Horry County
PA West Hanover township	PR Juncos	SC Irmo town
PA West Hempfield township	PR Las Piedras	SC Isle of Palms city
PA West Homestead borough	PR Loiza	SC Lexington County
PA West Lampeter township	PR Manati	SC Lincolnville town
PA West Lawn borough	PR Mayaguez	SC Mount Pleasant town
PA West Manchester township	PR Moca	SC Myrtle Beach city
PA West Mayfield borough	PR Naguabo	SC North Augusta city
PA West Middlesex borough	PR Naranjito	SC North Charleston city
PA West Mifflin borough	PR Penuelas	SC Pickens County
PA West Newton borough	PR Ponce	SC Pineridge town
PA West Norriton township	PR Rio Grande	SC Quinby town
PA West Pikeland township	PR San German	SC Rock Hill city
PA West Pittston borough	PR San Lorenzo	SC South Congaree town
PA West Pottsgrove township	PR Toa Alta	SC Spartanburg city
PA West Reading borough	PR Toa Baja	SC Spartanburg County
PA West Taylor township	PR Trujillo Alto	SC Springdale town
PA West View borough	PR Vega Alta	SC Sullivan's Island town
PA West Whiteland township	PR Vega Baja	SC Summerville town
PA West Wyoming borough	PR Yabucabo	SC Sumter city
PA West York borough	RI Barrington town	SC Sumter County
PA Westmont borough	RI Bristol town	SC Surfside Beach town
PA Westmoreland County	RI Burrillville town	SC West Columbia city
PA Westtown township	RI Central Falls city	SC York County
PA Wheatland borough	RI Coventry town	SD Big Sioux township
PA Whitaker borough	RI Cranston city	SD Central Pennington unorg.
PA White Oak borough	RI Cumberland town	SD Lincoln County
PA White township	RI East Greenwich town	SD Mapleton township

SD Minnehaha County	TX Brazos County	TX Hunters Creek Village city
SD North Sioux City city	TX Brookside Village city	TX Hurst city
SD Pennington County	TX Brownsville city	TX Hutchins city
SD Rapid City city	TX Bryan city	TX Impact town
SD Split Rock township	TX Buckingham town	TX Jacinto City city
SD Union County	TX Bunker Hill Village city	TX Jefferson County
SD Wayne township	TX Cameron County	TX Jersey Village city
TN Alcoa city	TX Carrollton city	TX Johnson County
TN Anderson County	TX Castle Hills city	TX Jones County
TN Bartlett town	TX Cedar Hill city	TX Katy city
TN Belle Meade city	TX Cedar Park city	TX Kaufman County
TN Berry Hill city	TX Chambers County	TX Keller city
TN Blount County	TX Cibolo city	TX Kemah city
TN Brentwood city	TX Clear Lake Shores city	TX Kennedale city
TN Bristol city	TX Clint town	TX Killeen city
TN Carter County	TX Cockrell Hill city	TX Kirby city
TN Church Hill town	TX College Station city	TX Kleberg County
TN Clarksville city	TX Colleyville city	TX La Marque city
TN Collegedale city	TX Collin County	TX La Porte city
TN Davidson County	TX Comal County	TX Lacy-Lakeview city
TN East Ridge city	TX Combes town	TX Lake Dallas city
TN Elizabethton city	TX Converse city	TX Lake Worth city
TN Farragut town	TX Copperas Cove city	TX Lakeside City town
TN Forest Hills city	TX Corinth town	TX Lakeside town
TN Germantown city	TX Coryell County	TX Lampasas County
TN Goodlettsville city	TX Crowley city	TX Lancaster city
TN Hamilton County	TX Dallas County	TX League City city
TN Hawkins County	TX Dalworthington Gardens city	TX Leander city
TN Hendersonville city	TX Deer Park city	TX Leon Valley city
TN Jackson city	TX Denison city	TX Lewisville city
TN Johnson City city	TX Denton city	TX Live Oak city
TN Jonesborough town	TX Denton County	TX Longview city
TN Kingsport city	TX DeSoto city	TX Lubbock County
TN Knox County	TX Dickinson city	TX Lumberton city
TN Lakesite city	TX Donna city	TX Martin County
TN Lakewood city	TX Double Oak town	TX McAllen city
TN Lookout Mountain town	TX Duncanville city	TX McLennan County
TN Loudon County	TX Ector County	TX Meadows city
TN Madison County	TX Edgecliff village	TX Midland city
TN Maryville city	TX Edinburg city	TX Midland County
TN Montgomery County	TX El Lago city	TX Mission city
TN Mount Carmel town	TX El Paso County	TX Missouri City city
TN Mount Juliet city	TX Ellis County	TX Montgomery County
TN Oak Hill city	TX Euless city	TX Morgan's Point city
TN Red Bank city	TX Everman city	TX Nash city
TN Ridgeside city	TX Farmers Branch city	TX Nassau Bay city
TN Rockford city	TX Flower Mound town	TX Nederland city
TN Shelby County	TX Forest Hill city	TX Nolanville city
TN Signal Mountain town	TX Fort Bend County	TX North Richland Hills city
TN Soddy-Daisy city	TX Friendswood city	TX Northcrest town
TN Sullivan County	TX Galena Park city	TX Nueces County
TN Sumner County	TX Galveston city	TX Odessa city
TN Washington County	TX Galveston County	TX Olmos Park city
TN Williamson County	TX Grand Prairie city	TX Palm Valley town
TN Wilson County	TX Grapevine city	TX Palmview city
TX Addison city	TX Grayson County	TX Pantego town
TX Alamo city	TX Gregg County	TX Parker County
TX Alamo Heights city	TX Groves city	TX Pearland city
TX Allen city	TX Guadalupe County	TX Pflugerville city
TX Archer County	TX Haltom City city	TX Pharr city
TX Azle city	TX Hardin County	TX Piney Point Village city
TX Balch Springs city	TX Harker Heights city	TX Port Arthur city
TX Balcones Heights city	TX Harlingen city	TX Port Neches city
TX Bayou Vista village	TX Harrison County	TX Portland city
TX Baytown city	TX Hedwig Village city	TX Potter County
TX Bedford city	TX Hewitt city	TX Primera town
TX Bell County	TX Hickory Creek town	TX Randall County
TX Bellaire city	TX Hidalgo County	TX Richardson city
TX Bellmead city	TX Highland Park town	TX Richland Hills city
TX Belton city	TX Highland Village city	TX River Oaks city
TX Benbrook city	TX Hill Country Village city	TX Robinson city
TX Beverly Hills city	TX Hilshire Village city	TX Rockwall city
TX Bexar County	TX Hitchcock city	TX Rockwall County
TX Blue Mound city	TX Hollywood Park town	TX Rollingwood city
TX Bowie County	TX Howe town	TX Rose Hill Acres city
TX Brazoria County	TX Humble city	TX Rowlett city

TX Sachse city	UT Logan city	VA Weber City town
TX Saginaw city	UT Mapleton city	VA Williamsburg city
TX San Angelo city	UT Midvale city	VA York County
TX San Benito city	UT Millville city	VT Burlington city
TX San Juan city	UT Murray city	VT Chittenden County
TX San Patricio County	UT North Logan city	VT Colchester town
TX Sansom Park city	UT North Ogden city	VT Essex Junction village
TX Santa Fe city	UT North Salt Lake city	VT Essex town
TX Schertz city	UT Ogden city	VT Shelburne town
TX Seabrook city	UT Orem city	VT South Burlington city
TX Seagoville city	UT Pleasant Grove city	VT Williston town
TX Selma city	UT Pleasant View city	VT Winooski city
TX Shavano Park city	UT Providence city	WA Algona city
TX Sherman city	UT Provo city	WA Auburn city
TX Shoreacres city	UT River Heights city	WA Beaux Arts Village town
TX Smith County	UT Riverdale city	WA Bellevue city
TX Socorro town	UT Riverton city	WA Bellingham city
TX South Houston city	UT Roy city	WA Benton County
TX Southside Place city	UT Sandy city	WA Bonney Lake city
TX Spring Valley city	UT Smithfield city	WA Bothell city
TX Stafford town	UT South Jordan city	WA Bremerton city
TX Sugar Land city	UT South Ogden city	WA Brier city
TX Sunset Valley city	UT South Salt Lake city	WA Clyde Hill town
TX Tarrant County	UT South Weber city	WA Cowlitz County
TX Taylor County	UT Springville city	WA Des Moines city
TX Taylor Lake Village city	UT Sunset city	WA DuPont city
TX Temple city	UT Syracuse city	WA Edmonds city
TX Terrell Hills city	UT Uintah town	WA Everett city
TX Texarkana city	UT Utah County	WA Fife city
TX Texas City city	UT Washington Terrace city	WA Fircrest town
TX Tom Green County	UT Weber County	WA Franklin County
TX Travis County	UT West Bountiful city	WA Gig Harbor city
TX Tye town	UT West Jordan city	WA Hunts Point town
TX Tyler city	UT West Point city	WA Issaquah city
TX Universal City city	UT West Valley City city	WA Kelso city
TX University Park city	UT Woods Cross city	WA Kennewick city
TX Victoria city	VA Albemarle County	WA Kent city
TX Victoria County	VA Alexandria city	WA Kirkland city
TX Wake Village city	VA Amherst County	WA Kitsap County
TX Waller County	VA Bedford County	WA Lacey city
TX Watauga city	VA Botetourt County	WA Lake Forest Park city
TX Webb County	VA Bristol city	WA Longview city
TX Webster city	VA Campbell County	WA Lynnwood city
TX Weslaco city	VA Charlottesville city	WA Marysville city
TX West Lake Hills city	VA Colonial Heights city	WA Medina city
TX West University Place city	VA Danville city	WA Mercer Island city
TX Westover Hills town	VA Dinwiddie County	WA Mill Creek city
TX Westworth village	VA Fairfax city	WA Millwood town
TX White Oak city	VA Falls Church city	WA Milton city
TX White Settlement city	VA Fredericksburg city	WA Mountlake Terrace city
TX Wichita County	VA Gate City town	WA Mukilteo city
TX Wichita Falls city	VA Gloucester County	WA Normandy Park city
TX Williamson County	VA Hanover County	WA Olympia city
TX Wilmer city	VA Herndon town	WA Pacific city
TX Windcrest city	VA Hopewell city	WA Pasco city
TX Woodway city	VA James City County	WA Port Orchard city
UT American Fork city	VA Loudoun County	WA Puyallup city
UT Bluffdale city	VA Lynchburg city	WA Redmond city
UT Bountiful city	VA Manassas city	WA Renton city
UT Cache County	VA Manassas Park city	WA Richland city
UT Cedar Hills town	VA Occoquan town	WA Ruston town
UT Centerville city	VA Petersburg city	WA Selah city
UT Clearfield city	VA Pittsylvania County	WA Steilacoom town
UT Clinton city	VA Poquoson city	WA Sumner city
UT Davis County	VA Prince George County	WA Thurston County
UT Draper city	VA Richmond city	WA Tukwila city
UT Farmington city	VA Roanoke city	WA Tumwater city
UT Farr West city	VA Roanoke County	WA Union Gap city
UT Fruit Heights city	VA Salem city	WA Vancouver city
UT Harrisville city	VA Scott County	WA West Richland city
UT Highland city	VA Spotsylvania County	WA Whatcom County
UT Hyde Park city	VA Stafford County	WA Woodway city
UT Kaysville city	VA Suffolk city	WA Yakima city
UT Layton city	VA Vienna town	WA Yakima County
UT Lehi city	VA Vinton town	WA Yarrow Point town
UT Lindon city	VA Washington County	WI Algoma town

WI Allouez village	WI La Crosse County	WI Vernon town
WI Altoona city	WI La Prairie town	WI Washington County
WI Appleton city	WI Lafayette town	WI Washington town
WI Ashwaubenon village	WI Lannon village	WI Waukesha city
WI Bayside village	WI Lima town	WI Waukesha County
WI Bellevue town	WI Lisbon town	WI Waukesha town
WI Beloit city	WI Little Chute village	WI Wausau city
WI Beloit town	WI Madison town	WI Wauwatosa city
WI Big Bend village	WI Maple Bluff village	WI West Allis city
WI Black Wolf town	WI Marathon County	WI West Milwaukee village
WI Blooming Grove town	WI McFarland village	WI Weston town
WI Brookfield city	WI Medary town	WI Westport town
WI Brookfield town	WI Menasha city	WI Wheaton town
WI Brown County	WI Menasha town	WI Whitefish Bay village
WI Brown Deer village	WI Menomonee Falls village	WI Wilson town
WI Brunswick town	WI Mequon city	WI Wind Point village
WI Buchanan town	WI Middleton city	WI Winnebago County
WI Burke town	WI Middleton town	WV Bancroft town
WI Butler village	WI Monona city	WV Barboursville village
WI Caledonia town	WI Mount Pleasant town	WV Belle town
WI Calumet County	WI Muskego city	WV Benwood city
WI Campbell town	WI Neenah city	WV Berkeley County
WI Cedarburg city	WI Neenah town	WV Bethlehem village
WI Cedarburg town	WI Nekimi town	WV Brooke County
WI Chippewa County	WI New Berlin city	WV Cabell County
WI Chippewa Falls city	WI North Bay village	WV Cedar Grove town
WI Clayton town	WI Norway town	WV Ceredo city
WI Combined Locks village	WI Oak Creek city	WV Charleston city
WI Cudahy city	WI Onalaska city	WV Chesapeake town
WI Dane County	WI Onalaska town	WV Clearview village
WI De Pere city	WI Oshkosh city	WV Dunbar city
WI De Pere town	WI Oshkosh town	WV East Bank town
WI Delafield town	WI Outagamie County	WV Follansbee city
WI Douglas County	WI Ozaukee County	WV Glasgow town
WI Dunn town	WI Pewaukee town	WV Glen Dale city
WI Eagle Point town	WI Pewaukee village	WV Hancock County
WI Eau Claire city	WI Pleasant Prairie town	WV Huntington city
WI Eau Claire County	WI Pleasant Prairie village	WV Hurricane city
WI Elm Grove village	WI Racine city	WV Kanawha County
WI Elmwood Park village	WI Racine County	WV Kenova city
WI Fitchburg city	WI Rib Mountain town	WV Marmet city
WI Fox Point village	WI River Hills village	WV Marshall County
WI Franklin city	WI Rock County	WV McMechen city
WI Germantown town	WI Rock town	WV Mineral County
WI Germantown village	WI Rothschild village	WV Moundsville city
WI Glendale city	WI Salem town	WV Nitro city
WI Grafton town	WI Schofield city	WV North Hills town
WI Grafton village	WI Scott town	WV Ohio County
WI Grand Chute town	WI Sheboygan city	WV Parkersburg city
WI Green Bay city	WI Sheboygan County	WV Poca town
WI Greendale village	WI Sheboygan Falls city	WV Putnam County
WI Greenfield city	WI Sheboygan Falls town	WV Ridgeley town
WI Greenville town	WI Sheboygan town	WV South Charleston city
WI Hales Corners village	WI Shelby town	WV St. Albans city
WI Hallie town	WI Shorewood Hills village	WV Triadelphia town
WI Harmony town	WI Shorewood village	WV Vienna city
WI Harrison town	WI Somers town	WV Wayne County
WI Hobart town	WI South Milwaukee city	WV Weirton city
WI Holmen village	WI St. Francis city	WV Wheeling city
WI Howard village	WI Stettin town	WV Wood County
WI Janesville city	WI Sturtevant village	WY Casper city
WI Janesville town	WI Superior city	WY Cheyenne city
WI Kaukauna city	WI Superior village	WY Evansville town
WI Kenosha city	WI Sussex village	WY Laramie County
WI Kenosha County	WI Thiensville village	WY Mills town
WI Kimberly village	WI Turtle town	WY Natrona County
WI Kohler village	WI Union town	
WI La Crosse city	WI Vandenbroek town	

**Appendix 7 of Preamble—  
Governmental Entities (Located Outside  
of an Urbanized Area) That Must Be  
Examined By the NPDES Permitting  
Authority for Potential Designation  
Under § 123.35(b)(2)**

(All listed entities have a population of at least 10,000 and a population density of at least 1,000. A listed entity would only be potentially designated if it operates a small MS4. See § 122.26(b)(16) for the definition of a small MS4.)

(This list does not include all operators of small MS4s that may be designated by the NPDES permitting authority. Operators of small MS4s in areas with populations below 10,000 and densities below 1,000 may also be designated but examination of them is not required. Also, entities such as military bases, large hospitals, prison complexes, universities, sewer districts, and highway departments that operate a small MS4 in an area listed here, or in an area otherwise designated by the NPDES permitting authority, may be designated and become subject to permitting regulations.) (Source: 1990 Census of Population and Housing, U.S. Bureau of the Census. This list is subject to change with the Decennial Census)

AL Daphne city	CA Ridgecrest city	IL Jacksonville city
AL Jacksonville city	CA Sanger city	IL Macomb city
AL Selma city	CA Santa Paula city	IL Mattoon city
AR Arkadelphia city	CA Selma city	IL Mount Vernon city
AR Benton city	CA South Lake Tahoe city	IL Ottawa city
AR Blytheville city	CA Temecula city	IL Pontiac city
AR Conway city	CA Tracy city	IL Quincy city
AR El Dorado city	CA Tulare city	IL Rantoul village
AR Hot Springs city	CA Turlock city	IL Sterling city
AR Magnolia city	CA Ukiah city	IL Streator city
AR Rogers city	CA Wasco city	IL Taylorville city
AR Searcy city	CA Woodland city	IL Woodstock city
AR Stuttgart city	CO Canon City city	IN Bedford city
AZ Douglas city	CO Durango city	IN Columbus city
CA Arcata city	CO Lafayette city	IN Crawfordsville city
CA Arroyo Grande city	CO Louisville city	IN Frankfort city
CA Atwater city	CO Loveland city	IN Franklin city
CA Auburn city	CO Sterling city	IN Greenfield city
CA Banning city	FL Bartow city	IN Huntington city
CA Brawley city	FL Belle Glade city	IN Jasper city
CA Calexico city	FL De Land city	IN La Porte city
CA Clearlake city	FL Eustis city	IN Lebanon city
CA Corcoran city	FL Haines City city	IN Logansport city
CA Delano city	FL Key West city	IN Madison city
CA Desert Hot Springs city	FL Leesburg city	IN Marion city
CA Dinuba city	FL Palatka city	IN Martinsville city
CA Dixon city	FL Plant City city	IN Michigan City city
CA El Centro city	FL St. Augustine city	IN New Castle city
CA El Paso de Robles (Paso Robles) city	FL St. Cloud city	IN Noblesville city
CA Eureka city	GA Americus city	IN Peru city
CA Fillmore city	GA Carrollton city	IN Plainfield town
CA Gilroy city	GA Cordele city	IN Richmond city
CA Grover City city	GA Dalton city	IN Seymour city
CA Hanford city	GA Dublin city	IN Shelbyville city
CA Hollister city	GA Griffin city	IN Valparaiso city
CA Lemoore city	GA Hinesville city	IN Vincennes city
CA Los Banos city	GA Moultrie city	IN Wabash city
CA Madera city	GA Newnan city	IN Warsaw city
CA Manteca city	GA Statesboro city	IN Washington city
CA Manteca city	GA Thomasville city	KS Arkansas City city
CA Oakdale city	GA Tifton city	KS Atchison city
CA Oroville city	GA Valdosta city	KS Coffeyville city
CA Paradise town	GA Waycross city	KS Derby city
CA Petaluma city	IA Ames city	KS Dodge City city
CA Porterville city	IA Ankeny city	KS El Dorado city
CA Red Bluff city	IA Boone city	KS Emporia city
CA Reedley city	IA Burlington city	KS Garden City city
	IA Fort Dodge city	KS Great Bend city
	IA Fort Madison city	KS Hays city
	IA Indianola city	KS Hutchinson city
	IA Keokuk city	KS Junction City city
	IA Marshalltown city	KS Leavenworth city
	IA Mason City city	KS Liberal city
	IA Muscatine city	KS Manhattan city
	IA Newton city	KS McPherson city
	IA Oskaloosa city	KS Newton city
	IA Ottumwa city	KS Ottawa city
	IA Spencer city	KS Parsons city
	ID Caldwell city	KS Pittsburg city
	ID Coeur d'Alene city	KS Salina city
	ID Lewiston city	KS Winfield city
	ID Moscow city	KY Bowling Green city
	ID Nampa city	KY Danville city
	ID Rexburg city	KY Frankfort city
	ID Twin Falls city	KY Georgetown city
	IL Belvidere city	KY Glasgow city
	IL Canton city	KY Hopkinsville city
	IL Carbondale city	KY Madisonville city
	IL Centralia city	KY Middlesborough city
	IL Charleston city	KY Murray city
	IL Danville city	KY Nicholasville city
	IL De Kalb city	KY Paducah city
	IL Dixon city	KY Radcliff city
	IL Effingham city	KY Richmond city
	IL Freeport city	KY Somerset city
	IL Galesburg city	KY Winchester city

LA Abbeville city	MS Indianola city	NY Kingston city
LA Bastrop city	MS Laurel city	NY Lockport city
LA Bogalusa city	MS McComb city	NY Massena village
LA Crowley city	MS Meridian city	NY Middletown city
LA Eunice city	MS Natchez city	NY Ogdensburg city
LA Hammond city	MS Starkville city	NY Olean city
LA Jennings city	MS Vicksburg city	NY Oneonta city
LA Minden city	MS Yazoo City city	NY Oswego city
LA Morgan City city	MT Bozeman city	NY Plattsburgh city
LA Natchitoches city	MT Havre city	NY Potsdam village
LA New Iberia city	MT Helena city	NY Watertown city
LA Opelousas city	MT Kalispell city	OH Alliance city
LA Ruston city	NC Albemarle city	OH Ashland city
LA Thibodaux city	NC Asheboro city	OH Ashtabula city
MA Amherst town	NC Boone town	OH Athens city
MA Clinton town	NC Eden city	OH Bellefontaine city
MA Milford town	NC Elizabeth City city	OH Bowling Green city
MA Newburyport city	NC Havelock city	OH Bucyrus city
MD Aberdeen town	NC Henderson city	OH Cambridge city
MD Cambridge city	NC Kernersville town	OH Chillicothe city
MD Salisbury city	NC Kinston city	OH Circleville city
MD Westminster city	NC Laurinburg city	OH Coshocton city
ME Waterville city	NC Lenoir city	OH Defiance city
MI Adrian city	NC Lexington city	OH Delaware city
MI Albion city	NC Lumberton city	OH Dover city
MI Alpena city	NC Monroe city	OH East Liverpool city
MI Big Rapids city	NC New Bern city	OH Findlay city
MI Cadillac city	NC Reidsville city	OH Fostoria city
MI Escanaba city	NC Roanoke Rapids city	OH Fremont city
MI Grand Haven city	NC Salisbury city	OH Galion city
MI Marquette city	NC Sanford city	OH Greenville city
MI Midland city	NC Shelby city	OH Lancaster city
MI Monroe city	NC Statesville city	OH Lebanon city
MI Mount Pleasant city	NC Tarboro town	OH Marietta city
MI Owosso city	NC Wilson city	OH Marion city
MI Sturgis city	ND Dickinson city	OH Medina city
MI Traverse City city	ND Jamestown city	OH Mount Vernon city
MN Albert Lea city	ND Minot city	OH New Philadelphia city
MN Austin city	ND Williston city	OH Norwalk city
MN Bemidji city	NE Beatrice city	OH Oxford city
MN Brainerd city	NE Columbus city	OH Piqua city
MN Faribault city	NE Fremont city	OH Portsmouth city
MN Fergus Falls city	NE Grand Island city	OH Salem city
MN Hastings city	NE Hastings city	OH Sandusky city
MN Hutchinson city	NE Kearney city	OH Sidney city
MN Mankato city	NE Norfolk city	OH Tiffin city
MN Marshall city	NE North Platte city	OH Troy city
MN New Ulm city	NE Scottsbluff city	OH Urbana city
MN North Mankato city	NJ East Windsor township	OH Washington city
MN Northfield city	NJ Plainsboro township	OH Wilmington city
MN Owatonna city	NJ Bridgeton city	OH Wooster city
MN Stillwater city	NJ Princeton borough	OH Xenia city
MN Willmar city	NM Alamogordo city	OH Zanesville city
MN Winona city	NM Artesia city	OK Ada city
MO Cape Girardeau city	NM Clovis city	OK Altus city
MO Farmington city	NM Deming city	OK Bartlesville city
MO Hannibal city	NM Farmington city	OK Chickasha city
MO Jefferson City city	NM Gallup city	OK Claremore city
MO Kennett city	NM Hobbs city	OK McAlester city
MO Kirksville city	NM Las Vegas city	OK Miami city
MO Marshall city	NM Portales city	OK Muskogee city
MO Maryville city	NM Roswell city	OK Okmulgee city
MO Poplar Bluff city	NM Silver City town	OK Owasso city
MO Rolla city	NV Elko city	OK Ponca City city
MO Sedalia city	NY Amsterdam city	OK Stillwater city
MO Sikeston city	NY Auburn city	OK Tahlequah city
MO Warrensburg city	NY Batavia city	OK Weatherford city
MO Washington city	NY Canandaigua city	OR Albany city
MS Brookhaven city	NY Corning city	OR Ashland city
MS Canton city	NY Cortland city	OR Astoria city
MS Clarksdale city	NY Dunkirk city	OR Bend city
MS Cleveland city	NY Fredonia village	OR City of the Dalles city
MS Columbus city	NY Fulton city	OR Coos Bay city
MS Greenville city	NY Geneva city	OR Corvallis city
MS Greenwood city	NY Gloversville city	OR Grants Pass city
MS Grenada city	NY Jamestown city	OR Hermiston city



OR	Klamath Falls city	TX	Cleburne city	WA	Oak Harbor city
OR	La Grande city	TX	Conroe city	WA	Port Angeles city
OR	Lebanon city	TX	Coppell city	WA	Pullman city
OR	McMinnville city	TX	Corsicana city	WA	Sunnyside city
OR	Newberg city	TX	Del Rio city	WA	Walla Walla city
OR	Pendleton city	TX	Dumas city	WA	Wenatchee city
OR	Roseburg city	TX	Eagle Pass city	WI	Beaver Dam city
OR	Woodburn city	TX	El Campo city	WI	Fond du Lac city
PA	Berwick borough	TX	Gainesville city	WI	Fort Atkinson city
PA	Bloomsburg town	TX	Gatesville city	WI	Manitowoc city
PA	Butler city	TX	Georgetown city	WI	Marinette city
PA	Carlisle borough	TX	Henderson city	WI	Marshfield city
PA	Chambersburg borough	TX	Hereford city	WI	Menomonie city
PA	Ephrata borough	TX	Huntsville city	WI	Monroe city
PA	Hanover borough	TX	Jacksonville city	WI	Oconomowoc city
PA	Hazleton city	TX	Kerrville city	WI	Stevens Point city
PA	Indiana borough	TX	Kingsville city	WI	Sun Prairie city
PA	Lebanon city	TX	Lake Jackson city	WI	Two Rivers city
PA	Meadville city	TX	Lamesa city	WI	Watertown city
PA	New Castle city	TX	Levelland city	WI	West Bend city
PA	Oil City city	TX	Lufkin city	WI	Whitewater city
PA	Pottsville city	TX	Mercedes city	WI	Wisconsin Rapids city
PA	Sunbury city	TX	Mineral Wells city	WV	Beckley city
PA	Uniontown city	TX	Mount Pleasant city	WV	Bluefield city
PA	Warren city	TX	Nacogdoches city	WV	Clarksburg city
RI	Narragansett town	TX	New Braunfels city	WV	Fairmont city
SC	Clemson city	TX	Palestine city	WV	Martinsburg city
SC	Easley city	TX	Pampa city	WV	Morgantown city
SC	Gaffney city	TX	Pecos city	WY	Evanston city
SC	Greenwood city	TX	Plainview city	WY	Gillette city
SC	Newberry town	TX	Port Lavaca city	WY	Green River city
SC	Orangeburg city	TX	Robstown city	WY	Laramie city
SD	Aberdeen city	TX	Rosenberg city	WY	Rock Springs city
SD	Brookings city	TX	Round Rock city	WY	Sheridan city
SD	Huron city	TX	San Marcos city		
SD	Mitchell city	TX	Seguin city		
SD	Vermillion city	TX	Snyder city		
SD	Watertown city	TX	Stephenville city		
SD	Yankton city	TX	Sweetwater city		
TN	Brownsville city	TX	Taylor city		
TN	Cleveland city	TX	The Colony city		
TN	Collierville town	TX	Uvalde city		
TN	Cookeville city	TX	Vernon city		
TN	Dyersburg city	TX	Vidor city		
TN	Greeneville town	UT	Brigham City city		
TN	Lawrenceburg city	UT	Cedar City city		
TN	McMinnville city	UT	Spanish Fork city		
TN	Millington city	UT	Tooele city		
TN	Morristown city	VA	Blacksburg town		
TN	Murfreesboro city	VA	Christiansburg town		
TN	Shelbyville city	VA	Front Royal town		
TN	Springfield city	VA	Harrisonburg city		
TN	Union City city	VA	Leesburg town		
TX	Alice city	VA	Martinsville city		
TX	Alvin city	VA	Radford city		
TX	Andrews city	VA	Staunton city		
TX	Angleton city	VA	Waynesboro city		
TX	Bay City city	VA	Winchester city		
TX	Beeville city	VT	Rutland city		
TX	Big Spring city	WA	Aberdeen city		
TX	Borger city	WA	Anacortes city		
TX	Brenham city	WA	Centralia city		
TX	Brownwood city	WA	Ellensburg city		
TX	Burkburnett city	WA	Moses Lake city		
TX	Canyon city	WA	Mount Vernon city		

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding entries in numerical order under the indicated heading to read as follows:

#### **§ 9.1 OMB approvals under the Paperwork Reduction Act.**

\* \* \* \* \*

40 CFR citation						OMB control No.
*	*	*	*	*	*	*
<b>EPA Administered Permit Programs: The National Pollutant Discharge Elimination System</b>						
122.26(g)	.....	.....	.....	.....	.....	2040-0211
*	*	*	*	*	*	*
<b>State Permit Requirements</b>						
123.35(b)	.....	.....	.....	.....	.....	2040-0211
*	*	*	*	*	*	*

## PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Revise § 122.21(c)(1) to read as follows:

### § 122.21 Application for a permit (applicable to State programs, see § 123.25).

(c) *Time to apply.* (1) Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under § 122.26(b)(14)(x) or (b)(15)(i) shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also paragraph (k) of this section and § 122.26(c)(1)(i)(G) and (c)(1)(ii).

3. Amend § 122.26 as follows:

a. Revise paragraphs (a)(9), (b)(4)(i), (b)(7)(i), (b)(14) introductory text, (b)(14)(x), (b)(14)(xi);

b. Redesignate paragraph (b)(15) as paragraph (b)(20) and add new paragraphs (b)(15) through (b)(19);

c. Revise the heading for paragraph (c), the first sentence of paragraph (c)(1) introductory text, the first sentence of paragraph (c)(1)(ii) introductory text, paragraphs (e) heading and introductory text, (e)(1), (e)(5) introductory text, and (e)(5)(i);

d. Add paragraphs (e)(8) and (e)(9); and

e. Revise paragraphs (f)(4), (f)(5), and (g).

The additions and revisions read as follows:

### § 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) \* \* \*  
(9)(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

(A) The discharge is from a small MS4 required to be regulated pursuant to § 122.32;

(B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

(C) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(D) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that the discharge, or category of discharges

within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(ii) Operators of small MS4s designated pursuant to paragraphs (a)(9)(i)(A), (a)(9)(i)(C), and (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with §§ 122.33 through 122.35. Operators of non-municipal sources designated pursuant to paragraphs (a)(9)(i)(B), (a)(9)(i)(C), and (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with paragraph (c)(1) of this section.

(iii) Operators of storm water discharges designated pursuant to paragraphs (a)(9)(i)(C) and (a)(9)(i)(D) of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter).

(b) \* \* \*

(4) \* \* \*

(i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part); or

(7) \* \* \*

(i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G of this part); or

(14) *Storm water discharge associated with industrial activity* means the discharge from any conveyance that is used for collecting and conveying storm

water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under this part 122. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (b)(14)(i) through (xi) of this section) include those facilities designated under the provisions of paragraph (a)(1)(v) of this section. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

\*   \*   \*   \*   \*

(x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25;

(15) *Storm water discharge associated with small construction activity* means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of *Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)*, pages 21-64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained

from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC. 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator must certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Director that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(ii) Any other construction activity designated by the Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

#### EXHIBIT 1 TO § 122.26(b)(15).—SUMMARY OF COVERAGE OF "STORM WATER DISCHARGES ASSOCIATED WITH SMALL CONSTRUCTION ACTIVITY" UNDER THE NPDES STORM WATER PROGRAM

Automatic Designation: Required Nationwide Coverage.

Potential Designation: Optional Evaluation and Designation by the NPDES Permitting Authority or EPA Regional Administrator..

- Construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres.
- Construction activities disturbing less than one acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres. (see § 122.26(b)(15)(i).)
- Construction activities that result in a land disturbance of less than one acre based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants. (see § 122.26(b)(15)(ii).)

## EXHIBIT 1 TO § 122.26(B)(15).—SUMMARY OF COVERAGE OF “STORM WATER DISCHARGES ASSOCIATED WITH SMALL CONSTRUCTION ACTIVITY” UNDER THE NPDES STORM WATER PROGRAM—Continued

Potential Waiver: Waiver from Requirements as Determined by the NPDES Permitting Authority..	Any automatically designated construction activity where the operator certifies: (1) A rainfall erosivity factor of less than five, or (2) That the activity will occur within an area where controls are not needed based on a TMDL or, for non-impaired waters that do not require a TMDL, an equivalent analysis for the pollutant(s) of concern. (see § 122.26(b)(15)(i).)
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(16) *Small municipal separate storm sewer system* means all separate storm sewers that are:

(i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

(ii) Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section, or designated under paragraph (a)(1)(v) of this section.

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(17) *Small MS4* means a small municipal separate storm sewer system.

(18) *Municipal separate storm sewer system* means all separate storm sewers that are defined as “large” or “medium” or “small” municipal separate storm sewer systems pursuant to paragraphs (b)(4), (b)(7), and (b)(16) of this section, or designated under paragraph (a)(1)(v) of this section.

(19) *MS4* means a municipal separate storm sewer system.

\* \* \* \* \*

(c) *Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity*—(1) *Individual application*. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. \* \* \*

\* \* \* \* \*

(ii) An operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(14)(x) of this section or is associated with small construction activity solely under paragraph (b)(15) of this section, is exempt from the requirements of § 122.21(g) and paragraph (c)(1)(i) of this section. \* \* \*

\* \* \* \* \*

(e) *Application deadlines*. Any operator of a point source required to obtain a permit under this section that does not have an effective NPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) *Storm water discharges associated with industrial activity*. (i) Except as provided in paragraph (e)(1)(ii) of this section, for any storm water discharge associated with industrial activity identified in paragraphs (b)(14)(i) through (xi) of this section, that is not part of a group application as described in paragraph (c)(2) of this section or that is not authorized by a storm water general permit, a permit application made pursuant to paragraph (c) of this section must be submitted to the Director by October 1, 1992;

(ii) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Director by March 10, 2003.

\* \* \* \* \*

(5) A permit application shall be submitted to the Director within 180 days of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter), for:

(i) A storm water discharge that the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see paragraphs (a)(1)(v) and (b)(15)(ii) of this section);

\* \* \* \* \*

(8) For any storm water discharge associated with small construction activity identified in paragraph (b)(15)(i) of this section, see § 122.21(c)(1). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(9) For any discharge from a regulated small MS4, the permit application made under § 122.33 must be submitted to the Director by:

(i) March 10, 2003 if designated under § 122.32(a)(1) unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under § 123.35(d)(3) (see § 122.33(c)(1)); or

(ii) Within 180 days of notice, unless the NPDES permitting authority grants a later date, if designated under § 122.32(a)(2) (see § 122.33(c)(2)).

(f) \* \* \*

(4) Any person may petition the Director for the designation of a large, medium, or small municipal separate storm sewer system as defined by paragraph (b)(4)(iv), (b)(7)(iv), or (b)(16) of this section.

(5) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4 in which case the Director shall make a final determination on the petition within 180 days after its receipt.

(g) *Conditional exclusion for “no exposure” of industrial activities and materials to storm water*. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs (g)(1) through (g)(4) of this section. “No exposure” means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste

products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(1) *Qualification.* To qualify for this exclusion, the operator of the discharge must:

(i) Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;

(ii) Complete and sign (according to § 122.22) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (g)(2) of this section;

(iii) Submit the signed certification to the NPDES permitting authority once every five years;

(iv) Allow the Director to inspect the facility to determine compliance with the "no exposure" conditions;

(v) Allow the Director to make any "no exposure" inspection reports available to the public upon request; and

(vi) For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(2) *Industrial materials and activities not requiring storm resistant shelter.* To qualify for this exclusion, storm resistant shelter is not required for:

(i) Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

(ii) Adequately maintained vehicles used in material handling; and

(iii) Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(3) *Limitations.* (i) Storm water discharges from construction activities identified in paragraphs (b)(14)(x) and (b)(15) are not eligible for this conditional exclusion.

(ii) This conditional exclusion from the requirement for an NPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

(iii) If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this

exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

(iv) Notwithstanding the provisions of this paragraph, the NPDES permitting authority retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(4) *Certification.* The no exposure certification must require the submission of the following information, at a minimum, to aid the NPDES permitting authority in determining if the facility qualifies for the no exposure exclusion:

(i) The legal name, address and phone number of the discharger (see § 122.21(b));

(ii) The facility name and address, the county name and the latitude and longitude where the facility is located;

(iii) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(A) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

(B) Materials or residuals on the ground or in storm water inlets from spills/leaks;

(C) Materials or products from past industrial activity;

(D) Material handling equipment (except adequately maintained vehicles);

(E) Materials or products during loading/unloading or transporting activities;

(F) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

(G) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(H) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(I) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

(J) Application or disposal of process wastewater (unless otherwise permitted); and

(K) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

(iv) All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of § 122.22: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (g)(2)) of this section. I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

4. Revise § 122.28(b)(2)(v) to read as follows:

**§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(v) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal

separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate. In making such a finding, the Director shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

\* \* \* \* \*

5. Add §§ 122.30 through 122.37 to subpart B to read as follows:

**§ 122.30 What are the objectives of the storm water regulations for small MS4s?**

(a) Sections 122.30 through 122.37 are written in a "readable regulation" format that includes both rule requirements and EPA guidance that is not legally binding. EPA has clearly distinguished its recommended guidance from the rule requirements by putting the guidance in a separate paragraph headed by the word "guidance".

(b) Under the statutory mandate in section 402(p)(6) of the Clean Water Act, the purpose of this portion of the storm water program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive storm water program to regulate these sources. (Because the storm water program is part of the National Pollutant Discharge Elimination System (NPDES) Program, you should also refer to § 122.1 which addresses the broader purpose of the NPDES program.)

(c) Storm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

(d) EPA strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and

consistently protecting and restoring aquatic ecosystems and protecting public health.

**§ 122.31 As a Tribe, what is my role under the NPDES storm water program?**

As a Tribe you may:

(a) Be authorized to operate the NPDES program including the storm water program, after EPA determines that you are eligible for treatment in the same manner as a State under §§ 123.31 through 123.34 of this chapter. (If you do not have an authorized NPDES program, EPA implements the program for discharges on your reservation as well as other Indian country, generally.);

(b) Be classified as an owner of a regulated small MS4, as defined in § 122.32. (Designation of your Tribe as an owner of a small MS4 for purposes of this part is an approach that is consistent with EPA's 1984 Indian Policy of operating on a government-to-government basis with EPA looking to Tribes as the lead governmental authorities to address environmental issues on their reservations as appropriate. If you operate a separate storm sewer system that meets the definition of a regulated small MS4, you are subject to the requirements under §§ 122.33 through 122.35. If you are not designated as a regulated small MS4, you may ask EPA to designate you as such for the purposes of this part.); or

(c) Be a discharger of storm water associated with industrial activity or small construction activity under §§ 122.26(b)(14) or (b)(15), in which case you must meet the applicable requirements. Within Indian country, the NPDES permitting authority is generally EPA, unless you are authorized to administer the NPDES program.

**§ 122.32 As an operator of a small MS4, am I regulated under the NPDES storm water program?**

(a) Unless you qualify for a waiver under paragraph (c) of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, State, Tribal, and local governments, including State departments of transportation; and:

(1) Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

(2) You are designated by the NPDES permitting authority, including where the designation is pursuant to §§ 123.35(b)(3) and (b)(4) of this chapter,

or is based upon a petition under § 122.26(f).

(b) You may be the subject of a petition to the NPDES permitting authority to require an NPDES permit for your discharge of storm water. If the NPDES permitting authority determines that you need a permit, you are required to comply with §§ 122.33 through 122.35.

(c) The NPDES permitting authority may waive the requirements otherwise applicable to you if you meet the criteria of paragraph (d) or (e) of this section. If you receive a waiver under this section, you may subsequently be required to seek coverage under an NPDES permit in accordance with § 122.33(a) if circumstances change. (See also § 123.35(b) of this chapter.)

(d) The NPDES permitting authority may waive permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

(1) Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program (see § 123.35(b)(4) of this chapter); and

(2) If you discharge any pollutant(s) that have been identified as a cause of impairment of any water body to which you discharge, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern.

(e) The NPDES permitting authority may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

(1) The permitting authority has evaluated all waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

(2) For all such waters, the permitting authority has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;

(3) For the purpose of this paragraph (e), the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

(4) The permitting authority has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

**§ 122.33 If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?**

(a) If you operate a regulated small MS4 under § 122.32, you must seek coverage under a NPDES permit issued by your NPDES permitting authority. If you are located in an NPDES authorized State, Tribe, or Territory, then that State, Tribe, or Territory is your NPDES permitting authority. Otherwise, your NPDES permitting authority is the EPA Regional Office.

(b) You must seek authorization to discharge under a general or individual NPDES permit, as follows:

(1) If your NPDES permitting authority has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a Notice of Intent (NOI) that includes the information on your best management practices and measurable goals required by § 122.34(d). You may file your own NOI, or you and other municipalities or governmental entities may jointly submit an NOI. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit an NOI that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

(2)(i) If you are seeking authorization to discharge under an individual permit and wish to implement a program under § 122.34, you must submit an application to your NPDES permitting authority that includes the information required under §§ 122.21(f) and 122.34(d), an estimate of square mileage served by your small MS4, and any additional information that your NPDES permitting authority requests. A storm sewer map that satisfies the requirement of § 122.34(b)(3)(i) will satisfy the map requirement in § 122.21(f)(7).

(ii) If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under § 122.34, you will need to comply with the permit application requirements of § 122.26(d). You must submit both Parts

of the application requirements in §§ 122.26(d)(1) and (2) by March 10, 2003. You do not need to submit the information required by §§ 122.26(d)(1)(ii) and (d)(2) regarding your legal authority, unless you intend for the permit writer to take such information into account when developing your other permit conditions.

(iii) If allowed by your NPDES permitting authority, you and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (b)(2)(ii) of this section to be co-permittees under an individual permit.

(3) If your small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have you participate in its storm water program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you as a limited co-permittee. As a limited co-permittee, you will be responsible for compliance with the permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of § 122.26, rather than the requirements of § 122.34. You do not need to comply with the specific application requirements of § 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). You may satisfy the requirements in § 122.26 (d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4's storm water management program.

(4) Guidance: In referencing an MS4's storm water management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating storm water pollutant control activities in your MS4, and detail the resources available to you to accomplish the plan.

(c) If you operate a regulated small MS4:

(1) Designated under § 122.32(a)(1), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section by March 10, 2003, unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under § 123.35(d)(3) of this chapter.

(2) Designated under § 122.32(a)(2), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES

permit under paragraph (b)(3) of this section, within 180 days of notice, unless the NPDES permitting authority grants a later date.

**§ 122.34 As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?**

(a) Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Your storm water management program must include the minimum control measures described in paragraph (b) of this section unless you apply for a permit under § 122.26(d). For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to § 122.33 constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." Your NPDES permitting authority will specify a time period of up to 5 years from the date of permit issuance for you to develop and implement your program.

(b) *Minimum control measures*—(1) *Public education and outreach on storm water impacts.* (i) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(ii) Guidance: You may use storm water educational materials provided by your State, Tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or

household hazardous wastes. EPA recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. EPA recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, EPA recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

(2) *Public involvement/participation.*

(i) You must, at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/participation program.

(ii) Guidance: EPA recommends that the public be included in developing, implementing, and reviewing your storm water management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

(3) *Illicit discharge detection and elimination.* (i) You must develop, implement and enforce a program to detect and eliminate illicit discharges

(as defined at § 122.26(b)(2)) into your small MS4.

(ii) You must:

(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

(B) To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(C) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system; and

(D) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(iii) You need address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

(iv) Guidance: EPA recommends that the plan to detect and address illicit discharges include the following four components: procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge; and procedures for program evaluation and assessment. EPA recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling, a program to promote, publicize, and facilitate public reporting of illicit

connections or discharges, and distribution of outreach materials.

(4) *Construction site storm water runoff control.* (i) You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with § 122.26(b)(15)(i), you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(ii) Your program must include the development and implementation of, at a minimum:

(A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;

(B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(D) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(E) Procedures for receipt and consideration of information submitted by the public, and

(F) Procedures for site inspection and enforcement of control measures.

(iii) Guidance: Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance. EPA recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving



water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a storm water pollution prevention plan for construction sites within your jurisdiction that discharge into your system. See § 122.44(s) (NPDES permitting authorities' option to incorporate qualifying State, Tribal and local erosion and sediment control programs into NPDES permits for storm water discharges from construction sites). Also see § 122.35(b) (The NPDES permitting authority may recognize that another government entity, including the permitting authority, may be responsible for implementing one or more of the minimum measures on your behalf.)

(5) *Post-construction storm water management in new development and redevelopment.*

(i) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(ii) You must:

(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;

(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and

(C) Ensure adequate long-term operation and maintenance of BMPs.

(iii) Guidance: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. EPA recommends that the BMPs chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages you to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, EPA recommends that you adopt a planning

process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or non-structural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address storm water runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Non-structural BMPs are preventative actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. EPA recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and EPA recommends that your requirements be responsive to these changes, developments or improvements in control technologies.

(6) *Pollution prevention/good housekeeping for municipal operations.*

(i) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, your State, Tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(ii) Guidance: EPA recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

(c) If an existing qualifying local program requires you to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in your NPDES permit that direct you to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local, State or Tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this section.

(d)(1) In your permit application (either a notice of intent for coverage

under a general permit or an individual permit application), you must identify and submit to your NPDES permitting authority the following information:

(i) The best management practices (BMPs) that you or another entity will implement for each of the storm water minimum control measures at paragraphs (b)(1) through (b)(6) of this section;

(ii) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(iii) The person or persons responsible for implementing or coordinating your storm water management program.

(2) If you obtain coverage under a general permit, you are not required to meet any measurable goal(s) identified in your notice of intent in order to demonstrate compliance with the minimum control measures in paragraphs (b)(3) through (b)(6) of this section unless, prior to submitting your NOI, EPA or your State or Tribe has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

(3) Guidance: Either EPA or your State or Tribal permitting authority will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

(e)(1) You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The permitting authority may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

(2) Guidance: EPA strongly recommends that until the evaluation of the storm water program in § 122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

(f) You must comply with other applicable NPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of §§ 122.41 through 122.49, as appropriate.

(g) *Evaluation and assessment*—(1) *Evaluation.* You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals.

**Note to Paragraph (g)(1):** The NPDES permitting authority may determine monitoring requirements for you in accordance with State/Tribal monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

(2) *Recordkeeping.* You must keep records required by the NPDES permit for at least 3 years. You must submit your records to the NPDES permitting authority only when specifically asked to do so. You must make your records, including a description of your storm water management program, available to the public at reasonable times during regular business hours (see § 122.7 for confidentiality provision). (You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.)

(3) *Reporting.* Unless you are relying on another entity to satisfy your NPDES permit obligations under § 122.35(a), you must submit annual reports to the NPDES permitting authority for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. Your report must include:

(i) The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;

(ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(iii) A summary of the storm water activities you plan to undertake during the next reporting cycle;

(iv) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(v) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

**§ 122.35 As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?**

(a) You may rely on another entity to satisfy your NPDES permit obligations to implement a minimum control measure if:

(1) The other entity, in fact, implements the control measure;

(2) The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and

(3) The other entity agrees to implement the control measure on your behalf. In the reports you must submit under § 122.34(g)(3), you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under section 122 to satisfy all of your permit obligations, including your obligation to file periodic reports required by § 122.34(g)(3), you must note that fact in your NOI, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, EPA encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

(b) In some cases, the NPDES permitting authority may recognize, either in your individual NPDES permit or in an NPDES general permit, that another governmental entity is responsible under an NPDES permit for implementing one or more of the minimum control measures for your small MS4 or that the permitting authority itself is responsible. Where the permitting authority does so, you are not required to include such minimum control measure(s) in your storm water management program. (For example, if a State or Tribe is subject to an NPDES permit that requires it to administer a program to control construction site runoff at the State or Tribal level and that program satisfies all of the requirements of § 122.34(b)(4), you could avoid responsibility for the construction measure, but would be responsible for the remaining minimum control measures.) Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

**§ 122.36 As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?**

NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in Clean Water Act sections 309 (b), (c), and (g) and 505, or under applicable State, Tribal, or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water Act is deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for toxic pollutants injurious to human health. If you are covered as a co-permittee under an individual permit or under a general permit by means of a joint Notice of Intent you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in your jurisdiction except as set forth in § 122.35(b).

**§ 122.37 Will the small MS4 storm water program regulations at §§ 122.32 through 122.36 and § 123.35 of this chapter change in the future?**

EPA will evaluate the small MS4 regulations at §§ 122.32 through 122.36 and § 123.35 of this chapter after December 10, 2012 and make any necessary revisions. (EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 storm water program. EPA will re-evaluate the regulations based on data from the NPDES MS4 storm water program, from research on receiving water impacts from storm water, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.)

6. In § 122.44, redesignate paragraphs (k)(2) and (k)(3) as paragraphs (k)(3) and (k)(4), remove the comma at the end of newly redesignated paragraph (k)(3) and add a semicolon in its place, and add new paragraphs (k)(2) and (s) to read as follows:

**§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).**

\* \* \* \* \*

(k) \* \* \*

(2) Authorized under section 402(p) of CWA for the control of storm water discharges;

\* \* \* \* \*

(s) *Qualifying State, Tribal, or local programs.* (1) For storm water discharges associated with small construction activity identified in § 122.26(b)(15), the Director may include permit conditions that

incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this paragraph (s)(1), then the Director must include those elements as conditions in the permit. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in § 122.26(b)(14)(x), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment control program is one that includes the elements listed in paragraph (s)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

7. Add § 122.62(a)(14) to read as follows:

**§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).**

\* \* \* \* \*

(a) \* \* \*

(14) For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in § 122.34(b) when:

(i) The permit does not include such measure(s) based upon the

determination that another entity was responsible for implementation of the requirement(s); and

(ii) The other entity fails to implement measure(s) that satisfy the requirement(s).

\* \* \* \* \*

8. Revise Appendices F, G, H, and I to Part 122 to read as follows:

**APPENDIX F TO PART 122.—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 250,000 ACCORDING TO THE 1990 DECEN-NIAL CENSUS BY THE BUREAU OF THE CENSUS**

State	Incorporated Place
Alabama .....	Birmingham.
Arizona .....	Phoenix.
	Tucson.
California .....	Long Beach.
	Los Angeles.
	Oakland.
	Sacramento.
	San Diego.
	San Francisco.
	San Jose.
Colorado .....	Denver.
District of Columbia	
Florida	Jacksonville.
	Miami.
	Tampa.
Georgia. ....	Atlanta.
Illinois .....	Chicago.
Indiana .....	Indianapolis.
Kansas .....	Wichita.
Kentucky .....	Louisville.
Louisiana .....	New Orleans.
Maryland .....	Baltimore.
Massachusetts .....	Boston.
Michigan .....	Detroit.
Minnesota .....	Minneapolis.
	St. Paul.
Missouri .....	Kansas City.
	St. Louis.
Nebraska .....	Omaha.
New Jersey .....	Newark.
New Mexico .....	Albuquerque.
New York .....	Buffalo.
	Bronx Borough.
	Brooklyn Borough.
	Manhattan Borough.
	Queens Borough.
	Staten Island Bor- ough.
North Carolina .....	Charlotte.
Ohio .....	Cincinnati.
	Cleveland.
	Columbus.
	Toledo.
Oklahoma .....	Oklahoma City.
	Tulsa.
Oregon .....	Portland.
Pennsylvania .....	Philadelphia.
	Pittsburgh.
Tennessee .....	Memphis.
	Nashville/Davidson.
Texas .....	Austin.
	Dallas.
	El Paso.
	Fort Worth.
	Houston.

## APPENDIX F TO PART 122.—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS—Continued

State	Incorporated Place
Virginia .....	San Antonio. Norfolk. Virginia Beach.
Washington .....	Seattle.
Wisconsin .....	Milwaukee.

## APPENDIX G TO PART 122.—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 100,000 BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS

State	Incorporated place
Alabama .....	Huntsville. Mobile. Montgomery.
Alaska .....	Anchorage.
Arizona .....	Mesa. Tempe.
Arkansas .....	Little Rock.
California .....	Anaheim. Bakersfield. Berkeley. Chula Vista. Concord. El Monte. Escondido. Fremont. Fresno. Fullerton. Garden Grove. Glendale. Hayward. Huntington Beach. Inglewood. Irvine. Modesto. Moreno Valley. Oceanside. Ontario. Orange.
Colorado .....	Aurora.

## APPENDIX G TO PART 122.—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 100,000 BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS—Continued

State	Incorporated place
Connecticut .....	Colorado Springs. Lakewood. Pueblo. Bridgeport. Hartford. New Haven. Stamford. Waterbury. Fort Lauderdale. Hialeah. Hollywood. Orlando. St. Petersburg. Tallahassee.
Florida .....	Columbus. Macon. Savannah.
Georgia .....	Boise City.
Idaho .....	Peoria.
Illinois .....	Rockford.
Indiana .....	Evansville. Fort Wayne. Gary. South Bend.
Iowa .....	Cedar Rapids. Davenport. Des Moines.
Kansas .....	Kansas City. Topeka.
Kentucky .....	Lexington-Fayette.
Louisiana .....	Baton Rouge.
Massachusetts .....	Shreveport.
Michigan .....	Springfield. Worcester. Ann Arbor. Flint. Grand Rapids. Lansing. Livonia. Sterling Heights. Warren.
Mississippi .....	Jackson.
Missouri .....	Independence.
Nebraska .....	Springfield.
Nevada .....	Lincoln.
	Las Vegas. Reno.

## APPENDIX G TO PART 122.—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 100,000 BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS—Continued

State	Incorporated place
New Jersey .....	Elizabeth. Jersey City. Paterson.
New York .....	Albany. Rochester. Syracuse. Yonkers.
North Carolina .....	Durham. Greensboro. Raleigh. Winston-Salem.
Ohio .....	Akron. Dayton. Youngstown.
Oregon .....	Eugene.
Pennsylvania .....	Allentown. Erie. Providence.
Rhode Island .....	Columbia.
South Carolina .....	Chattanooga.
Tennessee .....	Knoxville.
Texas .....	Abilene. Amarillo. Arlington. Beaumont. Corpus Christi. Garland. Irving. Laredo. Lubbock. Mesquite. Pasadena. Plano. Waco.
Utah .....	Salt Lake City.
Virginia .....	Alexandria. Chesapeake. Hampton. Newport News. Portsmouth. Richmond. Roanoke.
Washington .....	Spokane.
Wisconsin .....	Tacoma. Madison.

## APPENDIX H TO PART 122.—COUNTIES WITH UNINCORPORATED URBANIZED AREAS WITH A POPULATION OF 250,000 OR MORE ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS

State	County	Unincorporated urbanized population
California .....	Los Angeles .....	886,780
	Sacramento .....	594,889
	San Diego .....	250,414
Delaware .....	New Castle .....	296,996
Florida .....	Dade .....	1,014,504
Georgia .....	DeKalb .....	448,686
Hawaii .....	Honolulu <sup>1</sup> .....	114,506
Maryland .....	Anne Arundel .....	344,654
	Baltimore .....	627,593
	Montgomery .....	599,028

## APPENDIX H TO PART 122.—COUNTIES WITH UNINCORPORATED URBANIZED AREAS WITH A POPULATION OF 250,000 OR MORE ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS—Continued

State	County	Unincorporated urbanized population
Texas .....	Prince George's .....	494,369
Utah .....	Harris .....	729,206
Virginia .....	Salt Lake .....	270,989
Washington .....	Fairfax .....	760,730
	King .....	520,468

<sup>1</sup> County was previously listed in this appendix; however, population dropped to below 250,000 in the 1990 Census.

## APPENDIX I TO PART 122.—COUNTIES WITH UNINCORPORATED URBANIZED AREAS GREATER THAN 100,000 BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS

State	County	Unincorporated urbanized population
Alabama .....	Jefferson .....	78,608
Arizona .....	Pima .....	162,202
California .....	Alameda .....	115,082
	Contra Costa .....	131,082
	Kern .....	128,503
	Orange .....	223,081
	Riverside .....	166,509
	San Bernardino .....	162,202
Colorado .....	Arapahoe .....	103,248
Florida .....	Broward .....	142,329
	Escambia .....	167,463
	Hillsborough .....	398,593
	Lee .....	102,337
	Manatee .....	123,828
	Orange .....	378,611
	Palm Beach .....	360,553
	Pasco .....	148,907
	Pinellas .....	255,772
	Polk .....	121,528
	Sarasota .....	172,600
	Seminole .....	127,873
Georgia .....	Clayton .....	133,237
	Cobb .....	322,595
	Fulton .....	127,776
	Gwinnett .....	237,305
	Richmond .....	126,476
Kentucky .....	Jefferson .....	239,430
Louisiana .....	East Baton Rouge .....	102,539
	Parish .....	331,307
	Jefferson Parish .....	
Maryland .....	Howard .....	157,972
North Carolina .....	Cumberland .....	146,827
Nevada .....	Clark .....	327,618
Oregon .....	Multnomah <sup>1</sup> .....	52,923
	Washington .....	116,687
South Carolina .....	Greenville .....	147,464
	Richland .....	130,589
Virginia .....	Arlington .....	170,936
	Chesterfield .....	174,488
	Henrico .....	201,367
	Prince William .....	157,131
Washington .....	Pierce .....	258,530
	Snohomish .....	157,218

<sup>1</sup> County was previously listed in this appendix; however, population dropped to below 100,000 in the 1990 Census.

**PART 123—STATE PROGRAM REQUIREMENTS**

1. The authority citation for part 123 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 123.25 by removing the word “and” at the end of paragraph (a)(37), by removing the period at the end of paragraph (a)(38) and adding a

semicolon in its place, and by adding paragraphs (a)(39) through (a)(45) to read as follows:

**§ 123.25 Requirements for permitting.**

(a) \* \* \*

(39) § 122.30 (What are the objectives of the storm water regulations for small MS4s?);

(40) § 122.31 (For Indian Tribes only) (As a Tribe, what is my role under the NPDES storm water program?);

(41) § 122.32 (As an operator of a small MS4, am I regulated under the NPDES storm water program?);

(42) § 122.33 (If I am an operator of a regulated small MS4, how do I apply for an NPDES permit? When do I have to apply?);

(43) § 122.34 (As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?);

(44) § 122.35 (As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?); and

(45) § 122.36 (As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?).

\* \* \* \* \*

3. Add § 123.35 to subpart B to read as follows:

**§ 123.35 As the NPDES Permitting Authority for regulated small MS4s, what is my role?**

(a) You must comply with the requirements for all NPDES permitting authorities under Parts 122, 123, 124, and 125 of this chapter. (This section is meant only to supplement those requirements and discuss specific issues related to the small MS4 storm water program.)

(b) You must develop a process, as well as criteria, to designate small MS4s other than those described in § 122.32(a)(1) of this chapter, as regulated small MS4s to be covered under the NPDES storm water discharge control program. This process must include the authority to designate a small MS4 waived under paragraph (d) of this section if circumstances change. EPA may make designations under this section if a State or Tribe fails to comply with the requirements listed in this paragraph. In making designations of small MS4s, you must:

(1)(i) Develop criteria to evaluate whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(ii) Guidance: For determining other significant water quality impacts, EPA recommends a balanced consideration of the following designation criteria on

a watershed or other local basis: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to waters of the United States, and ineffective protection of water quality by other programs;

(2) Apply such criteria, at a minimum, to any small MS4 located outside of an urbanized area serving a jurisdiction with a population density of at least 1,000 people per square mile and a population of at least 10,000;

(3) Designate any small MS4 that meets your criteria by December 9, 2002. You may wait until December 8, 2004 to apply the designation criteria on a watershed basis if you have developed a comprehensive watershed plan. You may apply these criteria to make additional designations at any time, as appropriate; and

(4) Designate any small MS4 that contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the NPDES storm water program.

(c) You must make a final determination within 180 days from receipt of a petition under § 122.26(f) of this chapter (or analogous State or Tribal law). If you do not do so within that time period, EPA may make a determination on the petition.

(d) You must issue permits consistent with §§ 122.32 through 122.35 of this chapter to all regulated small MS4s. You may waive or phase in the requirements otherwise applicable to regulated small MS4s, as defined in § 122.32(a)(1) of this chapter, under the following circumstances:

(1) You may waive permit coverage for each small MS4s in jurisdictions with a population under 1,000 within the urbanized area where all of the following criteria have been met:

(i) Its discharges are not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4 (see paragraph (b)(4) of this section); and

(ii) If the small MS4 discharges any pollutant(s) that have been identified as a cause of impairment of any water body to which it discharges, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that address the pollutant(s) of concern.

(2) You may waive permit coverage for each small MS4 in jurisdictions with a population under 10,000 where all of the following criteria have been met:

(i) You have evaluated all waters of the U.S., including small streams,

tributaries, lakes, and ponds, that receive a discharge from the MS4 eligible for such a waiver.

(ii) For all such waters, you have determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern.

(iii) For the purpose of paragraph (d)(2)(ii) of this section, the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4.

(iv) You have determined that current and future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(v) Guidance: To help determine other significant water quality impacts, EPA recommends a balanced consideration of the following criteria on a watershed or other local basis: discharge to sensitive waters, high growth or growth potential, high population or commercial density, significant contributor of pollutants to waters of the United States, and ineffective protection of water quality by other programs.

(3) You may phase in permit coverage for small MS4s serving jurisdictions with a population under 10,000 on a schedule consistent with a State watershed permitting approach. Under this approach, you must develop and implement a schedule to phase in permit coverage for approximately 20 percent annually of all small MS4s that qualify for such phased-in coverage. Under this option, all regulated small MS4s are required to have coverage under an NPDES permit by no later than March 8, 2007. Your schedule for phasing in permit coverage for small MS4s must be approved by the Regional Administrator no later than December 10, 2001.

(4) If you choose to phase in permit coverage for small MS4s in jurisdictions with a population under 10,000, in accordance with paragraph (d)(3) of this section, you may also provide waivers in accordance with paragraphs (d)(1) and (d)(2) of this section pursuant to your approved schedule.

(5) If you do not have an approved schedule for phasing in permit coverage, you must make a determination whether to issue an NPDES permit or allow a waiver in accordance with paragraph (d)(1) or (d)(2) of this section, for each eligible MS4 by December 9, 2002.

(6) You must periodically review any waivers granted in accordance with paragraph (d)(2) of this section to determine whether any of the information required for granting the waiver has changed. At a minimum, you must conduct such a review once every five years. In addition, you must consider any petition to review any waiver when the petitioner provides evidence that the information required for granting the waiver has substantially changed.

(e) You must specify a time period of up to 5 years from the date of permit issuance for operators of regulated small MS4s to fully develop and implement their storm water program.

(f) You must include the requirements in §§ 122.33 through 122.35 of this chapter in any permit issued for regulated small MS4s or develop permit limits based on a permit application submitted by a regulated small MS4. (You may include conditions in a regulated small MS4 NPDES permit that direct the MS4 to follow an existing qualifying local program's requirements, as a way of complying with some or all of the requirements in § 122.34(b) of this chapter. See § 122.34(c) of this chapter. Qualifying local, State or Tribal program requirements must impose, at a minimum, the relevant requirements of § 122.34(b) of this chapter.)

(g) If you issue a general permit to authorize storm water discharges from small MS4s, you must make available a menu of BMPs to assist regulated small MS4s in the design and implementation of municipal storm water management programs to implement the minimum

measures specified in § 122.34(b) of this chapter. EPA plans to develop a menu of BMPs that will apply in each State or Tribe that has not developed its own menu. Regardless of whether a menu of BMPs has been developed by EPA, EPA encourages State and Tribal permitting authorities to develop a menu of BMPs that is appropriate for local conditions. EPA also intends to provide guidance on developing BMPs and measurable goals and modify, update, and supplement such guidance based on the assessments of the NPDES MS4 storm water program and research to be conducted over the next thirteen years.

(h)(1) You must incorporate any additional measures necessary to ensure effective implementation of your State or Tribal storm water program for regulated small MS4s.

(2) Guidance: EPA recommends consideration of the following:

(i) You are encouraged to use a general permit for regulated small MS4s;

(ii) To the extent that your State or Tribe administers a dedicated funding source, you should play an active role in providing financial assistance to operators of regulated small MS4s;

(iii) You should support local programs by providing technical and programmatic assistance, conducting research projects, performing watershed monitoring, and providing adequate legal authority at the local level;

(iv) You are encouraged to coordinate and utilize the data collected under several programs including water quality management programs, TMDL programs, and water quality monitoring programs;

(v) Where appropriate, you may recognize existing responsibilities among governmental entities for the control measures in an NPDES small MS4 permit (see § 122.35(b) of this chapter); and

(vi) You are encouraged to provide a brief (e.g., two page) reporting format to facilitate compiling and analyzing data from submitted reports under § 122.34(g)(3) of this chapter. EPA intends to develop a model form for this purpose.

## PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

**Authority:** Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

2. Revise § 124.52(c) to read as follows:

### § 124.52 Permits required on a case-by-case basis.

\* \* \* \* \*

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see § 122.26(a)(1)(v), (c)(1)(v), and (a)(9)(iii) of this chapter), the Regional Administrator may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the CWA. In requiring such information, the Regional Administrator shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 180 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

[FR Doc. 99-29181 Filed 12-7-99; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-6472-8]

**Report to Congress on the Phase II Storm Water Regulations****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of availability of Report to Congress.

**SUMMARY:** EPA submitted a Report to Congress prior to promulgation of the new Phase II storm water regulations. The Report was required in the Agency's appropriation legislation for fiscal year 2000. The appropriation legislation also requires that USEPA invite public comment on the Report. By this notice, USEPA invites public comment.

**DATES:** Written comments on this notice and the Report to Congress must be submitted on or before January 7, 2000.

**ADDRESSES:** The Report to Congress on the Phase II Storm Water Regulations is available through the Internet on the EPA Office of Wastewater Management web site at <http://www.epa.gov/owm/sw/phase2>. Hard copies may be obtained by contacting the U.S. EPA Water Resource Center, 401 M Street, S.W., Washington, D.C. 20460; telephone: (202) 260-7786 (24-hour voice mail), fax: (202) 260-0386, e-mail: [center.resource@epa.gov](mailto:center.resource@epa.gov). Comments should be mailed to George Utting, USEPA, Office of Wastewater Management, Mail Code 4203, 401 M Street, S.W., Washington, D.C. 20460. Comments also may be faxed to (202)

260-1460 or submitted via the Internet to [sw2@epamail.epa.gov](mailto:sw2@epamail.epa.gov).

**FOR FURTHER INFORMATION CONTACT:** George Utting, Office of Wastewater Management, Mail Code 4203, 401 M Street, S.W., Washington, D.C. 20460; telephone (202) 260-9530; email: [sw2@epamail.epa.gov](mailto:sw2@epamail.epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 29, 1999, the Administrator of EPA signed a regulation that implements Section 402(p)(6) of the Clean Water Act. This rulemaking is referred to as the final Phase II storm water rule and is also published in today's **Federal Register**.

The Phase II storm water rule expands the existing National Pollutant Discharge Elimination System (NPDES) permitting program to address storm water runoff from construction sites between one and five acres and municipal separate storm sewer systems in urbanized areas serving populations of less than 100,000. The Phase II rule builds on the existing Phase I program, which controls storm water runoff from municipalities with populations greater than 100,000 and 11 industrial categories, including construction disturbing over five acres.

**Statutory Authority**

The Report to Congress on the Phase II Storm Water Regulations was required by section 431(a) of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 2000, Public Law 106-74 (1999) (Appropriations Act). Section 431(a) of the Appropriations Act directed EPA to submit a report that

addresses the following issues with respect to the Phase II Storm Water Rule: (1) An analysis of the impact of the rule on local governments, (2) an explanation of the rationale for lowering the threshold for regulation of construction sites from 5 acres to 1 acre, (3) an explanation of why the coverage of the regulation is based on a census-determined population instead of a water quality threshold and documentation that storm water runoff is generally a problem in communities with populations of 50,000 to 100,000, and (4) information that supports the position of the Administrator that the Phase II storm water program should be administered as part of the NPDES permit program.

On October 28, 1999, EPA delivered to the Committee on Environment and Public Works in the Senate and the Committee on Transportation and Infrastructure in the House of Representatives a report that satisfied the mandate of section 431(a). Section 431(c) of the Appropriations Act directs EPA to publish the report in the **Federal Register** for public comment. By today's notice, EPA invites public comment by January 7, 2000. EPA will carefully review and evaluate comments received and determine whether the comments warrant further action.

Dated: November 4, 1999.

**J. Charles Fox,**

*Assistant Administrator, Office of Water.*

[FR Doc. 99-29301 Filed 12-7-99; 8:45 am]

**BILLING CODE 6560-50-P**



Registered  
Professional  
Engineer  
No. 10000

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Wednesday  
December 8, 1999

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**Part III**

**Department of  
Energy**

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**10 CFR Part 850  
Chronic Beryllium Disease Prevention  
Program; Final Rule**

## DEPARTMENT OF ENERGY

## 10 CFR Part 850

[Docket No. EH-RM-98-BRYLM]

RIN 1901-AA75

## Chronic Beryllium Disease Prevention Program

**AGENCY:** Office of Environment, Safety and Health, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is today publishing a final rule to establish a chronic beryllium disease prevention program (CBDPP) to reduce the number of workers currently exposed to beryllium in the course of their work at DOE facilities managed by DOE or its contractors, minimize the levels of, and potential for, exposure to beryllium, and establish medical surveillance requirements to ensure early detection of the disease. This program improves and codifies provisions of a temporary CBDPP established by DOE directive in 1997.

**EFFECTIVE DATE:** This rule is effective January 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Safety and Health, EH-51, 1000 Independence Avenue SW, Washington, DC 20585, 301-903-5684.

## SUPPLEMENTARY INFORMATION:

## I. Introduction

- A. Background
- B. Chemical Identification and Use
- C. Health Effects

- 1. Chronic Beryllium Disease
- 2. Beryllium Exposures at DOE Operations
- 3. Epidemiology
- 4. Value of Early Detection

## II. Legal Authority and Relationship to Other Programs

## III. Overview of the Final Rule

## IV. Section-by-Section Discussion of Comments and Rule Provisions

- A. Subpart A—General Provisions
- B. Subpart B—Administrative Requirements
- C. Subpart C—Specific Program Requirements

## List of Commenters

## V. Procedural Requirements

- A. Review Under Executive Order 12866
- B. Review Under the Regulatory Flexibility Act
- C. Review Under the Paperwork Reduction Act
- D. Review Under the National Environmental Policy Act
- E. Review Under Executive Order 13132
- F. Review Under Executive Order 12988
- G. Review Under the Unfunded Mandates Reform Act of 1995

H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

Appendix A to the Preamble—References  
Appendix B to the Preamble—Questions and Answers Concerning the Beryllium Induced Lymphocyte Proliferation Test (Be-LPT), Medical Records, and the Department of Energy (DOE) Beryllium Registry

## I. Introduction

This final rule implements a chronic beryllium disease prevention program (CBDPP) for the Department of Energy (DOE or the Department). This program will reduce the number of workers currently exposed to beryllium at DOE facilities managed by DOE or its contractors, minimize the levels of, and potential for, exposure to beryllium, establish medical surveillance requirements to ensure early detection of disease, and improve the state of information regarding chronic beryllium disease and beryllium sensitization.

On December 3, 1998, DOE published a Notice of Proposed Rulemaking (NPR) for public comment in the *Federal Register* (63 FR 66940) proposing regulations for a chronic beryllium disease prevention program. The public comment period for the NPR ended on March 9, 1999. DOE received 36 comment letters. In addition, public hearings were held on February 3, 1999, in Oak Ridge, Tennessee; February 9, 1999, in Golden, Colorado; and February 11, 1999, in Washington, DC. Comment letters were received from private individuals, DOE contractors, other federal agencies, trade associations, academia, public health and medical professionals, and attorneys.

On June 3, 1999, DOE published a notice of limited reopening of the comment period (64 FR 29811) to solicit public comments on options that DOE was considering for the criteria to be used for the release or transfer of equipment and other items previously used in DOE beryllium operations, either to other DOE facilities or to the public. In response to this reopening of the comment period, DOE received 15 additional comments.

DOE has carefully considered the comments and data from interested parties, as well as reference works, journal articles, and other information relevant to the subject of the rulemaking.

## A. Background

DOE has a long history of beryllium use because of the element's broad application to many nuclear operations and processes. Beryllium metal and ceramics are used in nuclear weapons,

as nuclear reactor moderators or reflectors, and as nuclear reactor fuel element cladding. At DOE, beryllium operations have historically included melting, casting, grinding, and machine tooling of parts.

Inhalation of beryllium dust or particles can cause chronic beryllium disease (CBD) or beryllium sensitization. CBD is a chronic, often debilitating, and sometimes fatal lung condition. Beryllium sensitization is a condition in which a person's immune system becomes highly responsive (allergic) to the presence of beryllium in the body. There has long been scientific consensus that exposure to airborne beryllium is the only cause of CBD.

As of September 1999, among the 11,266 current and former DOE federal and contractor workers who were screened for the disease, 130 workers had been diagnosed with CBD, and another 277 workers had become sensitized to beryllium. DOE anticipates an increase in the number of workers who may be exposed to beryllium as DOE moves forward with deactivating and decommissioning former nuclear weapons production facilities.

The current worker protection permissible exposure limit (PEL) of 2 µg/m<sup>3</sup>, measured as an 8-hour, time-weighted average (TWA), was adopted by the Occupational Safety and Health Administration (OSHA) in 1971 and codified in 29 CFR 1910.1000, Tables Z-1, Z-2 and Z-3 by reference to existing national consensus standards. DOE's predecessor agency, the Atomic Energy Commission (AEC), had previously established the same limit of 2 µg/m<sup>3</sup> for application at its facilities in 1949, and that limit has remained in effect at DOE's facilities up to the present. In 1977, the National Institute for Occupational Safety and Health (NIOSH), a federal agency, recommended to OSHA an exposure limit of 0.5 µg/m<sup>3</sup> for beryllium. NIOSH, at the same time, classified beryllium as a potential occupational carcinogen.

Between the 1970s and 1984, there appeared to be a significant reduction in the incidence rate of CBD. This, coupled with the long latency period for the disease, led to the assumption that CBD was occurring only among workers who had been exposed to high levels of beryllium decades earlier (e.g., in the 1940s). However, the number of confirmed cases of CBD, more recent data suggesting the occurrence of CBD among workers with low-level exposures, and the expected future increase in the number of workers potentially exposed to beryllium (during decontamination and decommissioning activities) all indicate a need for more

aggressive workplace controls to minimize worker exposure to beryllium in the DOE complex.

In December 1998, the American Conference of Governmental Industrial Hygienists (ACGIH) published a Notice of Intended Change for its beryllium exposure limit. ACGIH is a professional organization that develops and publishes consensus occupational health standards. In the Notice, ACGIH proposed an 8-hour TWA of 0.2  $\mu\text{g}/\text{m}^3$  to help minimize the occurrence of CBD and sensitization. DOE's NOPR did not address ACGIH's proposed change because publication of the NOPR preceded ACGIH's announcement.

DOE has reviewed current technical information and is of the opinion that it is difficult to determine the exposure level that is necessary to eliminate the risk of contracting CBD. Until OSHA completes its rulemaking, DOE has decided to implement an aggressive, two-pronged exposure reduction and minimization program that is expected to further protect DOE federal and contractor workers from the hazards associated with exposure to beryllium. While DOE acknowledges that this rule may not eliminate the risk of contracting CBD, DOE believes that this rule will significantly decrease the number of workers exposed and the level of exposure to beryllium, and therefore, is expected to decrease disease. First, DOE is establishing an 8-hour TWA action level of 0.2  $\mu\text{g}/\text{m}^3$  that triggers certain workplace precautions and control measures. Second, DOE is requiring its contractors and any covered DOE employers to establish in their CBDPPs exposure reduction and minimization measures designed to reduce potential exposure to levels below the action level. This program will enhance and supplement existing worker protection programs established under DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees.

This rulemaking initiative was preceded by several years of information gathering and data analysis. In 1996, DOE surveyed its contractors to characterize the extent of beryllium usage, the types of tasks involving beryllium usage, the controls in place for each task, the estimated number of workers exposed during each task, and the estimated exposure levels associated with each task. This survey found that between 1994 and 1996, 10 of the 15 DOE sites surveyed performed 64 different operations or processes that could expose workers to beryllium. The surveyed DOE sites estimated that between 518 and 530 workers in 58 different job categories were potentially

exposed to beryllium in the performance of these 64 operations or processes. These estimates were updated in 1999 through a cost survey conducted by the Office of Environment, Safety and Health (1999 Environment, Safety and Health Cost Survey). In this survey, 14 DOE sites indicated that they would be affected by the proposed rule. These sites reported that 1,634 workers in more than 100 different job categories would be potentially exposed to beryllium and 1,236 of these workers (75.6 percent) would be potentially exposed at the proposed action level or PEL.

The 1996 survey also provided information on exposure levels experienced by workers at the surveyed sites. Although the exposure data were not comprehensive, the reported 8-hour TWA exposure data (personal breathing zone monitoring results) for these workers ranged from nondetectable to 25  $\mu\text{g}/\text{m}^3$ . Most of these exposure levels were reported to be below the 2  $\mu\text{g}/\text{m}^3$  8-hour TWA PEL. To control worker exposures in the affected processes or operations, the surveyed sites reported the use of various engineering and administrative controls, including ventilation hoods, glove boxes, wet machining methods, high-efficiency particulate air (HEPA) vacuums, regulated areas, action levels and administrative warning levels, and personal protective equipment. The survey showed that beryllium exposure controls varied considerably among the DOE facilities.

To supplement the data obtained from the 1996 survey, the Department published a **Federal Register** notice on December 30, 1996, requesting scientific data, information, and views relevant to a new DOE beryllium health standard (61 FR 68725). This was followed by two Beryllium Public Forums, one held in Albuquerque, New Mexico, and one held in Oak Ridge, Tennessee, in January 1997.

Acting on the information compiled from these various sources, and in view of the time needed to promulgate a rule, then-Secretary of Energy Pena directed the Office of Environment, Safety and Health to publish a new DOE policy to protect the workforce while the Department moved forward with its rulemaking process. DOE Notice 440.1, Interim Chronic Beryllium Disease Prevention Program, was signed by Secretary Pena and issued on July 15, 1997. This interim Notice established a CBDPP that enhanced and supplemented worker protection programs under DOE Order 440.1A.

Because of the complexity and significance of issues regarding the

development of a DOE beryllium worker protection rule, Secretary Pena also established the Beryllium Rule Advisory Committee (BRAC) in June 1997 to advise DOE on issues pertinent to the proposed rulemaking. The BRAC, which consisted of a diverse set of stakeholders and recognized experts from DOE, other federal agencies, industry, labor, medicine, and academia, explored issues and generated recommendations for consideration in the development of a CBDPP rule.<sup>1</sup>

#### *B. Chemical Identification and Use*

Beryllium (atomic number 4) is a silver-gray, metallic element with a density of 1.85  $\text{g}/\text{cm}^3$  and a high stiffness. The second lightest of the metals, beryllium also has a high melting point (1285° C) and heat absorption capacity; a pound of beryllium will absorb as much heat as 5 pounds of copper.

Beryllium occurs naturally in the earth's surface in about 30 minerals found in rocks, coal and oil, soil, and volcanic dust. Beryllium used in industry begins as a silicate ( $\text{BeSiO}_3$ ) in beryl and bertrandite ores. In very pure crystalline form, beryl takes the form of gems, such as blue-green aquamarine and green emeralds. Bertrandite is mined in Utah. The United States is the world's leading producer, processor, and consumer of beryllium products.

Beryllium, discovered in 1798, was not widely used in industry until the 1940s and 1950s. Beryllium can be used as a pure metal, mixed with other metals to form alloys, processed to salts that dissolve in water, and processed to form oxides and ceramic materials.

Beryllium metal has been produced for various industrial uses, especially in the aerospace and defense industries. Both structural and instrument grade materials are manufactured, including windshield frames and other structures in high-speed aircraft and space vehicles, aircraft and space shuttle brakes, satellite mirrors and space telescopes, inertial guidance systems and gyroscopes, neutron moderators or reflectors in nuclear reactors, X-ray windows, and nuclear weapons components.

In alloys, beryllium confers on metal specific properties of resistance to corrosion, wear, and fatigue; high electrical and thermal conductivity;

<sup>1</sup> Individual members and groups of members made BRAC recommendations. The recommendations were generated by the facilitated process used during the meetings and were not adopted by the committee as consensus opinions. For convenience of reference these recommendations are referred to as the "BRAC recommendations."

strength; and hardness. Beryllium-copper (BeCu) alloys usually contain about 2 percent beryllium, but vary greatly in composition to meet different industrial and consumer needs.

Beryllium is also added to aluminum, nickel, zinc, and zirconium for some applications. Beryllium alloys are used for springs, switches, relays, and connectors in automobiles, computers, radar and telecommunications equipment, and other instruments; high-strength non-sparking tools; molds or casts to make metal, glass, and plastic items; sports equipment such as golf clubs and bicycle frames; and dental bridges and related applications.

Other beryllium materials include soluble salts and oxides. Beryllium soluble salts, such as beryllium fluoride, chloride, and sulfate, are used in nuclear reactors, in glass manufacture, and as catalysts for certain chemical reactions. Beryllium Oxide (BeO) is used to make ceramics for electronics, and other electrical equipment. Beneficial properties of BeO include hardness, strength, excellent heat conductivity, and good electrical insulation.

### C. Health Effects

DOE received a number of comments (Exs. 2, 5, 14, 19, 20, 22, 23, 24, 26, 29, 30)<sup>2</sup> regarding the "Health Effects" section of the NOPR. DOE has carefully considered these comments and has revised the following health effects discussion as appropriate.

#### 1. Chronic Beryllium Disease

Chronic beryllium disease (CBD) is a granulomatous lung disease that is caused by the body's immune system response (similar to an allergic reaction) to inhaled dust or fumes containing beryllium metal, alloys, beryllium compounds or mixtures, or insoluble beryllium salts. The body's immune system response to beryllium is often called beryllium sensitization. Beryllium sensitization precedes the development of CBD. Sensitization can occur quickly or many years after exposure to beryllium, progressing into disease at a rate of approximately 10 percent a year (ref. 1)<sup>3</sup>.

It is hypothesized that beryllium is a hapten (a substance that provokes an immune response only when combined with another substance, generally a protein) that binds to peptides on

mucosal surfaces. In susceptible individuals the beryllium-peptide complex initiates an immune response, which may progress ultimately to granuloma formation in the pulmonary interstitium. Data have suggested that CBD can occur at relatively low exposure levels and, in some cases, after relatively brief durations of exposure. The International Agency for Research on Cancer (IARC) and ACGIH classify beryllium as a human carcinogen.

Frequently reported symptoms include one or more of the following: dyspnea (shortness of breath) on exertion, cough, fever, night sweats, and chest pain and, less frequently, arthralgias (neuralgic pain in joints), fatigue, weight loss, or appetite loss. On physical examination, a doctor may find signs of CBD results, such as rales (changes in lung sounds), cyanosis (lack of oxygen), digital clubbing, or lymphadenopathy (enlarged lymph nodes). A radiograph (X-ray) of the lungs may show many small scars. Patients may also have an abnormal breathing test, pulmonary function test, and a blood test, the peripheral blood beryllium-induced lymphocyte proliferation test (Be-LPT). Examination of the lung tissue under the microscope may show granulomas, which are signs of damage due to the body's reaction to beryllium. CBD may be confused with other lung diseases, especially sarcoidosis. In advanced cases, there may be manifestations of right-sided heart failure, including cor pulmonale (enlarged right ventricle of the heart caused by blockage in the lungs).

The Be-LPT is highly specific for beryllium sensitivity and has a high predictive value for beryllium disease. It is the most definitive means of ruling out beryllium disease as the cause of non-specific lung and other symptoms. Therefore, this measurement of sensitization to beryllium identifies at-risk individuals, as well as individuals whose lung problems are not beryllium related (ref. 1). For individuals whose Be-LPT screening results exceed a certain threshold, an additional Be-LPT is conducted on cells washed from a segment of the lung. The presence of granulomata in the lung of an individual with a positive lung Be-LPT confirms the presence of CBD. In the absence of granulomata or other clinical evidence of CBD, individuals with a positive Be-LPT are classified as sensitized to beryllium.

The clinical course of CBD is highly variable. Some individuals deteriorate rapidly; most experience long, gradual deterioration. Treatment consists of oral corticosteroid therapy. Individuals with impaired respiratory gas exchange may

require continuous oxygen administration.

Individuals sensitized to beryllium are asymptomatic and not physically impaired. Once sensitization has occurred, it is medically prudent to prevent additional exposure to beryllium. Individuals with CBD have a clinical illness varying from mild to severe. In severe cases, the affected individuals may be permanently and totally disabled. Mortality of the sensitized individuals directly attributable to CBD and its complications is estimated to be 30 percent (ref. 2). This estimate is based upon historical data reflecting both the higher levels of exposure that occurred in the workplace prior to regulation of workplace exposure in the late 1940s and a tracking of the medical history of subjects of CBD over several decades. DOE's more recent experience with improved diagnoses and treatments may result in a lower mortality rate for CBD cases.

#### 2. Beryllium Exposures at DOE Operations

DOE's medical surveillance programs are discovering cases of CBD among workers who were first exposed after 1970, when DOE facilities were expected to maintain workers exposure to beryllium below the OSHA PEL. As of June 1999, 119 workers (88 at the Rocky Flats facility in Golden Colorado, 29 at the Y-12 Plant in Oak Ridge, Tennessee, and two at the Hanford facility in Richland, Washington) have been diagnosed with CBD, and another 258 workers (197 at the Rocky Flats facility, 59 at the Y-12 Plant, one at the Hanford facility, and one at the Mound facility in Miamisburg, Ohio) have been diagnosed as sensitized to beryllium from among approximately 10,000 current and former DOE federal and contractor workers who were screened for the disease.

A worker's exposure is measured by personal monitoring, which is accomplished by sampling the air within the breathing zone of the worker. Personal monitoring of occupational exposures to beryllium was not widely adopted at DOE sites until the 1980s. Prior to the 1980s, many sites relied on area monitoring to assess occupational exposures to beryllium. However, results from area monitoring have been shown to significantly underestimate actual exposure levels. Since 1984, personal sampling data have provided more precise information on occupational exposure to beryllium at DOE sites.

Available personal sampling data provides a clear indication of the low

<sup>2</sup> A list of commenters is included as an appendix to the Section-by-Section Discussion of Comments and Rule Provisions in this Supplementary Information section.

<sup>3</sup> A listing of references is included as an appendix to this Supplementary Information section.

levels of beryllium exposure that can be achieved in both fabrication and machining operations, and decommissioning and decontamination projects, when effective control strategies are implemented. Most beryllium fabrication and machining operations at DOE have occurred to date at the Rocky Flats facility, and at the Y-

12 Plant. Over time, engineering improvements and advanced control strategies have significantly reduced occupational beryllium exposure levels in these operations.

Since 1980, and continuing through 1996, about 1600 personal samples were collected at the Oak Ridge Y-12 Plant (Table 1). These samples were taken at

several different Y-12 operations associated with CBD, with a bias toward sampling those jobs where exposure potential was greatest or where previous monitoring results were high. Despite this bias, over two-thirds of sample results were below the limit of detection of 0.1 µg/m<sup>3</sup> for the sampling and analytical method used at Y-12.

TABLE 1.—OAK RIDGE Y-12 PLANT PERSONAL SAMPLING FOR BERYLLIUM EXPOSURE

	1980 to 1989	1990 to 1996
Number of Samples .....	148 .....	1448
Estimated Arithmetic Mean Level of Exposure <sup>1</sup> .....	0.9 µg/m <sup>3</sup> .....	0.3 µg/m <sup>3</sup>
Percent of Samples Less Than 2 µg/m <sup>3,2</sup> .....	94% .....	98%

<sup>1</sup> The arithmetic mean was estimated from the samples using linear regression.

<sup>2</sup> Samples were analyzed using flame spectroscopy with a detection limit of about 0.1 µg/m<sup>3</sup>.

These Y-12 data are from beryllium operations where cases of CBD have been found. The facilities where these operations take place have not been remodeled since the 1970s. Thus the differences between sampling results measured before and after 1990 are attributed to changing work practices. For example, increased monitoring in

the 1990s identified a greater number of exposures over the existing exposure limit. The investigations of these exposures resulted in changes to work practices that had contributed to the high exposures. This focus on operations with elevated exposure levels also led to a significant reduction in average exposure levels.

Personal sampling data from the Rocky Flats Building 444 Beryllium Machine Shop (Table 2) collected in 1984–85 and then again in 1986 after extensive remodeling to the ventilation system illustrates the impact and effectiveness of engineering modifications to control exposure.

TABLE 2.—ROCKY FLATS BUILDING 444 BERYLLIUM MACHINE SHOP PERSONAL SAMPLING DATA (BERYLLIUM EXPOSURE)

	1984 to 1985	1986
Number of Samples .....	99 .....	279
Estimated Arithmetic Mean Level of Exposure <sup>1</sup> .....	1.19 µg/m <sup>3,1</sup> .....	0.035 µg/m <sup>3</sup>
Percent of Samples Less Than 2 µg/m <sup>3,2</sup> .....	84% .....	99.6%

<sup>1</sup> The arithmetic mean was estimated from the samples using linear regression.

<sup>2</sup> Samples were analyzed using graphite furnace atomic absorption (AA) or Inductively Coupled Plasma (ICP) spectroscopy with a detection limit of about 0.01 µg/m<sup>3</sup>.

The samples collected in 1984 and 1985 were the first personal samples collected in this shop following the discovery of a case of CBD in 1984. Controls in that machine shop had previously been judged to be adequate based on area monitoring. In addition to the extensive remodeling of the ventilation system in the shop to minimize leakage from ventilation hoods, operations performed outside of hoods were eliminated to the extent possible. The improved engineering controls in this shop reduced average exposure levels by a factor greater than 30, to levels approaching 1% of the existing PEL.

A final example, taken from personal sampling data collected during the decontamination of Rocky Flats Buildings 865 and 867 in 1995–1996, further demonstrates the low levels of beryllium exposure which can be achieved through the implementation of effective controls (Table 3). Each worker was sampled during each work shift during this time period.

TABLE 3.—DECONTAMINATION OF ROCKY FLATS BUILDINGS 865 AND 867 PERSONAL SAMPLING—1995 TO 1996

Number of Samples .....	7,673
Arithmetic Mean Level of Exposure .....	0.03 µg/m <sup>3</sup>
Percent of Samples Less Than 2 µg/m <sup>3</sup> .....	99.8%

As can be seen from the foregoing examples, machining and D&D operations at Y-12 and Rocky Flats achieved an exceptional level of exposure control.

While the application of controls eliminates predictable sources of exposure, there still can be large day-to-day variations in exposure. The exposures that remain are likely to reflect accidents, equipment failures, or poor work planning. Meeting exposure minimization goals will require planning to limit the potential for such occurrences, and monitoring to detect those that do occur, so they can be

investigated and future occurrences can be prevented.

### 3. Epidemiology

Epidemiology is the field of public health that examines relationships between disease in people, and exposures or events that are related to that disease. Occupational epidemiology is the study of the effects of workplace exposures on the frequency and distribution of diseases and injuries.

Hardy and Tabershaw (ref. 3) reported the first evidence of the existence of CBD in a 1946 paper. The paper described “delayed chemical pneumonitis” among fluorescent lamp workers exposed to beryllium compounds. The differential diagnosis included sarcoidosis (an immune disease of unknown etiology) and tuberculosis.

There also are reports of CBD in individuals without known occupational exposure to beryllium. Under the direction of Dr. Thomas Mancuso, 16 cases of CBD were

diagnosed by X-ray examination among 20,000 residents living near a beryllium production facility in Lorain, Ohio (ref. 4). Likewise, a 1949 report described 11 patients with CBD who lived near a beryllium extraction plant (ref. 5). Ten of these 11 lived within 3/4 of a mile of the plant, and exposure from plant discharges into the air was the suggested cause of their CBD. Measurements of air concentrations of beryllium at various distances from the plant provided the basis for the Environmental Protection Agency's (EPA's) community permissible exposure limit (24-hour ambient air limit of 0.01 microgram of beryllium per cubic meter of air [ $\mu\text{g}/\text{m}^3$ ]).

In addition, CBD has been reported among family members of beryllium workers who were presumably exposed to contaminated work clothing during the 1940s and 1950s (refs. 6, 7). The virtual disappearance of CBD caused by air pollution or household exposures has been attributed to more stringent control of air emissions and improved work practices, such as mandatory work clothing exchange. However, as recently as 1989, a woman previously diagnosed with sarcoidosis was diagnosed with CBD. She had no occupational exposure, but her husband was a beryllium production worker. This is the first new case of non-occupational CBD reported in 30 years (ref. 8).

Sterner and Eisenbud suggested that CBD was a highly selective immunologic response. Their conclusion was based on epidemiologic evidence that (1) severe cases have occurred at low exposure; (2) the level of beryllium contained in tissue did not correlate with the extent of the disease; (3) there was a correlation between disease and low atmospheric concentration, but not high concentrations; (4) the onset of symptoms could occur years after the termination of exposure; and (5) pulmonary lesions were not easily reproduced in animals (ref. 7).

A registry of production plant CBD cases was started at Columbia University in 1947. A second registry of phosphor-lamp CBD cases was started around the same time. In 1952, a Beryllium Case Registry was established at the Massachusetts Institute of

Technology (MIT), where files from the other beryllium registries were consolidated. The consolidated Beryllium Case Registry was moved to Massachusetts General Hospital in the 1960s, and ultimately was relocated to the National Institute for Occupational Safety and Health (NIOSH) in 1978. At that time, the Beryllium Case Registry contained 622 cases of CBD, 224 cases of acute beryllium disease, and 44 acute cases that developed into CBD. Twenty-three cases were attributed to household exposures and 42 to air pollution (ref. 6). The Beryllium Case Registry, which is now inactive, was criticized as deficient in acquiring data on cases, identifying populations at risk (denominator data), maintaining follow-up of questionable cases, and obtaining exposure data (ref. 9).

According to criteria utilized by the Beryllium Case Registry, the diagnosis of CBD included at least four of the following six criteria, with one of the first two conditions required: (1) the establishment of beryllium exposure based on occupational history or results of air samples, (2) the presence of beryllium in lung tissue or thoracic lymph tissue or in the urine, (3) evidence of lower respiratory tract disease and a clinical course consistent with beryllium disease, (4) pathological changes consistent with beryllium disease upon examination of lung tissue or thoracic lymph nodes, (5) radiologic evidence of interstitial lung disease, and (6) decreased pulmonary function tests (ref. 10).

The beryllium-induced lymphocyte proliferation test (Be-LPT) in blood and bronchoalveolar lavage (BAL) fluid have allowed earlier identification of the disease. The BAL Be-LPT now is one of the criteria required for diagnosis (refs. 11-13). Beryllium has been found to act as a specific antigen, causing proliferation and accumulation of beryllium-specific helper T lymphocytes ( $\text{CD4}^+$ ) in the lung (ref. 14). Current data suggest that the peripheral blood Be-LPT is a specific and sensitive method for testing beryllium sensitivity (ref. 11). The presence of granulomatous tissue in the lung along with a positive BAL Be-LPT is considered definitive evidence for diagnosis of CBD (ref. 12). When a

worker has clear signs and symptoms of interstitial lung disease and a positive Be-LPT, CBD may be presumed only if performing a bronchoscopy on the worker is deemed to be too risky given the health status of that of that worker.

An article published by Cullen et al. in 1987 reported on an epidemiology study of CBD among precious-metal refinery workers (ref. 15). In 1993, researchers at the National Jewish Medical and Research Center (NJMRC) published two reports on epidemiology studies that were designed to determine the incidence of CBD among beryllium workers and the value of the Be-LPT in detecting CBD (refs. 16, 17). One of these two studies was conducted at DOE's Rocky Flats Environmental Technology Site (Rocky Flats). These three epidemiology studies showed that CBD incidence among exposed workers was the same as had been reported among workers exposed in the 1940s, when the disease was first recognized. This exposure limit was originally derived by analogy to other toxic metals (ref. 18). A decline in the number of reports of CBD in the 1970s and up to 1984 led to the assumption that the 2  $\mu\text{g}/\text{m}^3$  limit had been effective in preventing CBD (ref. 6). DOE recognizes that the 1980s-1990s studies used more effective screening and diagnostic methods than the earlier studies. Nevertheless, these 1980s-1990s studies provide strong evidence that adherence to the OSHA standard has not prevented new cases of disease.

In 1991, responding to NJMRC findings, DOE's Office of Environment, Safety and Health initiated a beryllium worker health surveillance program at Rocky Flats to provide medical screening to current and former beryllium workers who had not participated in the NJMRC studies. In addition, the Office of Environment, Safety and Health initiated a study at the Oak Ridge Y-12 Plant (Y-12) in 1991 to learn if the NJMRC findings on CBD incidence and the effectiveness of the Be-LPT could be replicated. Results to date confirm NJMRC findings that CBD incidence rates are high and that the Be-LPT is an effective screening test for CBD as shown in Table 4.

TABLE 4.—RESULTS OF MEDICAL SCREENING OF BERYLLIUM-EXPOSED WORKERS AT THREE DOE SITES THROUGH DECEMBER 1997

	Rocky Flats	Y-12	Mound
Individuals Examined .....	6,257 .....	1,949 .....	632
Abnormal Be-LPT Number (percent) .....	221 (3.5%) .....	77 (4%) .....	1 <sup>1</sup>
Completed Diagnostic Exams .....	186 .....	33 .....	0

TABLE 4.—RESULTS OF MEDICAL SCREENING OF BERYLLIUM-EXPOSED WORKERS AT THREE DOE SITES THROUGH DECEMBER 1997—Continued

	Rocky Flats	Y-12	Mound
CBD Number (percent) <sup>2</sup> .....	79 (1.3%) <sup>3</sup> .....	25 (1.3%) <sup>4</sup> .....	0

<sup>1</sup> The one Mound employee who was found to be consistently positive declined diagnostic testing. Four others had one positive blood test result and were awaiting retesting.

<sup>2</sup> Includes 44 cases confirmed through biopsy and testing of lavage cells and 35 presumptive cases in which the pulmonologist diagnosed CBD but biopsy and/or lavage could not be completed.

<sup>3</sup> Includes 56 cases found through the surveillance program since 1991, 17 cases through the 1987–1991 NJMRC study, and 6 cases between 1984 and 1987 for a total of 79 CBD cases. Six of the 79 cases had consistently normal Be-LPT results and were identified through lung disease symptoms or abnormal chest X-rays.

<sup>4</sup> Includes 17 cases found in the surveillance program since 1993, 2 cases found in 1991 among beryllium workers who had been diagnosed with other lung diseases, and 6 cases found by the site clinic in 1993 among 146 currently exposed beryllium workers who were provided the Be-LPT.

In 1996, three studies reported on exposure to beryllium associated with CBD and immunologic sensitization to beryllium (refs. 19–21). Two of the studies reported on cases of CBD at Rocky Flats (refs. 19, 20). The third reported on an epidemiology study of a private sector beryllium ceramics fabrication plant that began operating in 1981 (ref. 21). Both Rocky Flats and the ceramics plant were extensively monitored for compliance with the current OSHA 8-hour TWA exposure standard of 2 µg/m<sup>3</sup>. The authors concluded that exposures among the highest exposed groups in the plants were, on average, below the 2 µg/m<sup>3</sup> limit. At both plants, cases of CBD and sensitization to beryllium were found not only among the highest exposed workers, but also among the lowest exposed workers, including administrative and other personnel who did not work directly with beryllium.

Stange and colleagues reported on the findings of a health surveillance program at Rocky Flats that used the Be-LPT to screen for CBD (ref. 19). Of 97 individuals who tested positive on the Be-LPT, 28 were found to have CBD.

The article included an analysis of the work histories of these 97 current and former workers. A qualitative exposure estimate based on the work histories of individuals who developed CBD concluded that exposures varied by more than one order of magnitude. Extensive air monitoring data were available for machinists, which were one of the highest exposed groups.

Barnard and colleagues completed an extensive analysis of the monitoring data associated with machining operations at Rocky Flats (ref. 20). Prior to 1984, air monitoring was accomplished with fixed area monitors located near the machine tools that were thought to be the primary sources of emissions into the work-rooms. In 1984, personal sampling was initiated, which was more representative of individual exposure. The article reported a high degree of uncertainty in exposure assessments prior to 1984 due to the lack of correlation between area monitoring and personal monitoring. The authors concluded that machinists, as a group, shared similar exposure potential, that average exposures were less than but near the 2 µg/m<sup>3</sup> limit, and

that excursions above the limit were common.

Kreiss and colleagues studied CBD occurring in a beryllium oxide ceramic manufacturing plant (ref. 21). They found that machinists had the highest incidence rate of beryllium sensitization and the highest exposure potential. The area monitoring conducted in this plant was aimed at estimating exposures associated with job titles and was found to correlate with personal sampling. The authors concluded, “the existing data suggests that the machining exposures resulting in the 14.3 odds ratio for beryllium sensitization were largely within those permitted by current regulations.” This article confirmed the findings of a study of CBD in the neighborhood of a beryllium extraction plant, which showed a correlation between ambient beryllium levels and incidence of CBD (ref. 5). Further analyses of CBD incidence at Rocky Flats, as yet unpublished, showed a similar higher risk for machinists compared to that for other workers (See Table 5).

TABLE 5.—INCIDENCE RATES OF CBD AT ROCKY FLATS

Job category	Number tested	CBD cases	Incidence rate (percent)
Beryllium Machinist .....	223	21	9.4
Administrative .....	1,903	23	1.2
Professional .....	1,396	15	1.1
All Employees Tested .....	6,254	64	1.0

Cases of CBD have occurred in machinists who worked in the Y-12 beryllium ceramic machine shop, where levels have been quite low. Only a small percentage of samples there have detected beryllium. Continuous area air monitors have operated in the shop throughout its existence. One area sample indicated levels above 2 µg/m<sup>3</sup> when a machine tool was operated with

an exhaust duct that was disconnected. No other area measurements above 2 µg/m<sup>3</sup> were recorded, and the median measurement was at the level of detection.

Kreiss (ref. 22) describes the relative hazards in sectors of the beryllium industry, and risk factors for CBD and sensitization related to work processes in a beryllium manufacturing plant that

produced pure metal, oxide, alloys, and ceramics. Employees in the pebble plant (producing beryllium metal) had the highest prevalence of CBD (6.4%) compared with other workers (1.3%). The pebble plant was not associated with the highest gravimetric industrial hygiene measurements, indicating that total beryllium was probably not a good indicator for hazard surveillance. The

report indicates that particle size or other characteristics may be more important contributors to risk than the total mass of breathing zone particles, that daily-weighted averages are poor estimates of personal exposure, and that methods of exposure assessment may poorly reflect actual exposures from accidents.

Several authors have highlighted the uncertainty that exists in the exposure assessments (refs. 20, 21, 23). The chemical composition of the beryllium materials used and the particle size distribution of the aerosol created by the work operation affect the bioavailability of beryllium, and neither is accounted for by current personal sampling and analytical methods. It is not known what percentage of measurable airborne beryllium is capable of reaching the regions of the lung where health effects occur. In addition, area monitoring used in the past does not correlate with the personal monitoring that is thought to be more representative of exposure (refs. 20, 23).

Epidemiologic investigations to date have failed to show whether the time course of exposure (dose rate) is biologically significant. High day-to-day variation in exposure level and excursions above the 2  $\mu\text{g}/\text{m}^3$  limit have occurred in all groups studied for which exposure data is available. Excursions make up a significant contribution to individuals' total doses, confounding attempts to understand if dose rate is an important risk factor. Beryllium oxide and metal in the lung dissolve slowly over a period of months and years (ref. 24), producing the beryllium ion that elicits an immune response (ref. 25). The persistent presence of the beryllium ion in the lung makes CBD a chronic disease (ref. 26). Both intermittent high and continual low exposures to insoluble forms of beryllium can create and maintain a lung burden that will not clear for many years, if at all (ref. 27).

Certain individuals are more susceptible to CBD than others. It has long been suspected that genetic predisposition plays an important role

in determining who will develop CBD. Recent advances in genetics and immunology have made it possible for researchers to investigate the basis for CBD and to identify a genetic component (ref. 28).

Differences in individual susceptibility have made it difficult to understand the relationship between exposure and CBD. Early epidemiology studies detected similar disease rates among high- and low-exposure occupational groups (Table 6). The NJMRC researchers detected differences in disease rates among the workers they studied (Table 7). The DOE surveillance findings supported this conclusion (See Table 5). NJMRC researchers have found cases of CBD among those who had been exposed for periods as short as one month and those who had unrecognized or seemingly trivial exposure. However, the NJMRC also found evidence that disease incidence increased with increasing exposure and concluded that exposure to beryllium should be minimized.

TABLE 6.—CHRONIC BERYLLIUM DISEASE RATES

Exposed during the 1940s	Estimated exposed	Cases	Estimated incidence per 100 exposed	Estimated level of exposure $\mu\text{g}/\text{m}^3$
Residents Living Within 0.25 Mile of a Beryllium Extraction Plant <sup>1</sup> .....	500	5	1.0	1
Fluorescent Lamp Manufacturing: <sup>1</sup>				
Massachusetts .....	15,000	175	1.16	100
Ohio .....	8,000	32	0.4	100
Machine Shop <sup>1</sup> .....	225	11	4.9	500
Beryllium-Copper Foundry <sup>1</sup> .....	1,000	13	1.3	500
Beryllium Extraction: <sup>1</sup>				
Lorain, Ohio .....	1,700	22	1.3	1,000
Painesville, Ohio .....	200	0	0.0	1,000
Reading, Pennsylvania .....	4,000	51	1.3	1,000
Exposed from the 1970s to the 1980s	Study participants	Cases	Incidence per 100 exposed	Estimated level of exposure $\mu\text{g}/\text{m}^3$
Beryllia Ceramics Plant <sup>2</sup> .....	505	9	1.8	NA
The DOE Rocky Flats Plant <sup>3</sup> .....	895	15	1.7	1
Second Beryllia Ceramics Plant <sup>4</sup> .....	709	8	1.1	0.5

<sup>1</sup> Eisenbud and Lisson, "Epidemiologic Aspects of Beryllium-Induced Non Malignant Lung Disease: A 30-Year Update," JOM, Vol. 25, pp 196–202, 1983.

<sup>2</sup> Kathleen Kreiss et al., "Beryllium Disease Screening in the Ceramics Industry," JOM, Vol. 35, pp 267–274, 1993.

<sup>3</sup> Kathleen Kreiss et al., "Epidemiology of Beryllium Sensitization and Disease in Nuclear Workers," Am. Rev. Res. Dis., Vol. 148, pp 985–991, 1993.

<sup>4</sup> Kathleen Kreiss et al., "Machining Risk of Beryllium Disease and Sensitization with Median Exposures Below 2  $\mu\text{g}/\text{m}^3$ ," Am. J. Ind. Med., Vol. 30, pp 16–25, 1996.

TABLE 7.—BERYLLIUM SENSITIZATION AND DISEASE RATES AT ROCKY FLATS<sup>1</sup>

Beryllium process title	Workers sensitized	Workers doing process	Sensitization rate (percent)
Cleaning Tools, Machines .....	7	255	2.7
Machining .....	6	189	3.2
Inspection .....	2	138	1.4
Metallurgical Sample Preparation .....	3	115	2.6
Sawing .....	5	6	4.7
Trepanning .....	3	77	3.9
Band Sawing .....	4	67	6.0



TABLE 7.—BERYLLIUM SENSITIZATION AND DISEASE RATES AT ROCKY FLATS <sup>1</sup>—Continued

Beryllium process title	Workers sensitized	Workers doing process	Sensitization rate (percent)
Decanning, Shearing .....	2	65	3.1
Precision Grinding .....	2	31	6.5
All participants	Number	Participants	Rate (percent)
Sensitized .....	18	895	2.0
Confirmed CBD Cases .....	15	895	1.7

<sup>1</sup> Kathleen Kreiss et al. "Epidemiology of Beryllium Sensitization and Disease in Nuclear Workers," Am. Rev. Res. Dis., Vol. 148, pp 985–991, 1993.

A recent publication by Eisenbud in January 1998 (ref. 29) consolidated the previous epidemiology studies that have questioned the relevance of the current PEL after evaluating the effect of the level of exposure on disease. In this article, Eisenbud concludes that it "appears" the current 2 µg/m<sup>3</sup> standard is not protective enough. Rather than recommend an alternative exposure limit, however, Eisenbud points to the need for the development of an animal model to aid in better understanding the etiology of CBD and suggests that innovative measures may be needed to control the disease.

In summary, evidence suggests higher incidence of CBD among workers with higher exposures (e.g., machinists), but, at lower exposure levels, other factors may operate to confound a clear dose-response relationship. These factors include: (1) the effect of peak exposures (such that most of the exposure results from short-term episodes; (2) the inadequacy of area monitoring in reflecting actual exposure; (3) the effect of chemical composition, size, and shape on the bioavailability of the inhaled particles; (4) inadequate monitoring of the chemical beryllium composition, size, and shape of inhaled particles; and (5) the effect of genetic predisposition on developing beryllium sensitization and CBD. As a result, the existing literature does not point to a specific tolerance level for exposure to beryllium.

#### 4. Value of Early Detection

Early detection of a disease is of value if it leads to earlier treatment and a better prognosis for the individual being tested. Screening for CBD with the Be-LPT can provide earlier detection than is possible with other tests. In some cases this has led to treatment of CBD to reduce lung damage that would not have been possible if the CBD remained undiagnosed by other tests, such as chest X-ray. Researchers at the NJMRC compared the lung functions of patients

with CBD who had been identified through abnormal chest X-rays or clinical symptoms to those of patients whose CBD had been identified through positive Be-LPTs (ref. 30). Twelve out of 21 Be-LPT-identified patients had lung abnormalities, including reduced exercise tolerance. Fourteen of 15 patients identified through chest X-rays or clinical symptoms had abnormal lung function, and their abnormalities were more severe. The authors concluded that the Be-LPT was useful because it permitted detection of affected individuals earlier in the disease process.

DOE's experience is consistent with this conclusion. The 79 cases of CBD diagnosed among Rocky Flats workers showed a range of severity. Thirty-nine individuals had symptoms that required treatment ranging from inhaled bronchodilators to corticosteroids to oxygen. Two individuals died of CBD. Seventy-three of the 79 cases were identified among individuals who had abnormal Be-LPT results but normal chest X-rays or pulmonary function screening test results. Clinical evaluations using computer aided tomography (CAT) scan, bronchoalveolar lavage-BeLPT (BAL Be-LPT), transbronchial biopsy, and gas diffusion studies of workers confirmed the presence of CBD in these workers.

There is no direct evidence that removal from exposure improves the prognosis of patients with CBD, because follow-up studies have not been done. However, beryllium does clear from the lung over time, and a reduced level of antigen in the lung should reduce the severity of the inflammation and the amount of lung damage (ref. 27). Additionally, members of the work force who are consistently positive on the Be-LPT are those most likely to eventually develop CBD. Treating physicians generally recommend that these individuals receive more frequent and more extensive pulmonary function testing so that the lung damage

associated with CBD can be minimized through early detection and treatment. Sensitized and early CBD patients can be removed from jobs with beryllium exposure.

Finally, beryllium sensitization found through screening with the Be-LPT is the earliest indication that working conditions and work practices are affecting the health of exposed workers. This allows for an earlier opportunity to initiate corrective actions and possibly to prevent cases of CBD. Early detection enhances the contribution of medical surveillance to the management of the CBDPP.

## II. Legal Authority and Relationship to Other Programs

Today's rule, which establishes minimum requirements for the protection of beryllium-associated workers, is promulgated pursuant to DOE's authority under section 161 of the Atomic Energy Act of 1954 (AEA) to prescribe such regulations as it deems necessary to govern any activity authorized by the AEA, specifically including standards for the protection of health and minimization of danger to life or property (42 U.S.C. 2201(i)(3) and (p)). Additional authority for the rule, insofar as it applies to DOE Federal employees, is found in section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668) and Executive Order 12196, "Occupational Safety and Health Programs for Federal Employees," (5 U.S.C. 7902 note), which require Federal agencies to establish comprehensive occupational safety and health programs for their employees.

DOE intends this final rule to be integrated with the existing worker protection management program for DOE Federal and contractor employees established by DOE Order 440.1A. The requirements in this final rule will supersede any conflicting provisions of DOE Order 440.1A on the effective date of the rule. On that date the rule also

will supersede DOE Notice 440.1, "Interim Chronic Beryllium Disease Prevention Program," established by then-Secretary Pena on July 15, 1997.

Some comments on the NOPR raised questions about the effect of the rule on collective bargaining and grievance-arbitration processes established by collective bargaining agreements. One union urged (Ex. 22) DOE to clarify whether the terms of this rule are subject to negotiation between a union and a contractor.

DOE has concluded that there is a compelling need for the CBDPP requirements in this final rule in order for DOE to meet its obligation under the AEA to protect the health of its employees and other workers at DOE facilities. The regulatory requirements of this rule will by operation of law apply to DOE contracts. Therefore, the application and enforcement of this rule are not subject to the Work Smart Standards Program or other related processes. DOE believes that this mandatory application of the CBDPP requirements to all DOE beryllium activities is appropriate given the hazardous nature of beryllium-related work.

While the minimum requirements in the rule are non-negotiable and may not be waived, the rule does not preclude all collective bargaining on matters related to beryllium exposure protections. Some rule provisions, such as the requirement for a beryllium exposure reduction and minimization provision in an employer's CBDPP, are performance-based and allow for negotiation between the employer and employee representatives. Other rule requirements, however, are stated in specific terms that do not permit any change. For example, section 850.24(e) of the rule specifies the accuracy that must be achieved by exposure monitoring of workers: not less than plus or minus 25 percent, with a confidence level of 95 percent, for airborne concentrations of beryllium at the action level. DOE's objectives of controlling worker exposure to airborne beryllium and obtaining better exposure data would be defeated if accuracy of monitoring were a subject of collective bargaining. Although today's rule may incidentally affect collective bargaining, it is neutral with respect to the balance of bargaining power of organized labor and management. The rule applies to all DOE contractors whether or not they are involved in collective bargaining.

This final rule is not being promulgated as a nuclear safety requirement under 10 CFR Part 820, Procedural Rules for Nuclear Activities,

because beryllium generally is not a nuclear material. Any radiological implications of the two radioisotopic forms of beryllium would be addressed under the provisions of 10 CFR part 835, Occupational Radiation Protection.

### III. Overview of the Final Rule

The final rule strengthens the worker protection program established under DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees (or DOE Orders 5483.1B, 5480.4, 5480.8A, and 5480.10 for operations not covered by DOE Order 440.1A), by supplementing the general worker protection program requirements with provisions that are specifically designed to manage and control beryllium exposure hazards in the DOE workplace. These hazard-specific provisions are derived largely from DOE Notice 440.1, "Interim Chronic Beryllium Disease Prevention Program," but a number of provisions have been modified as a result of DOE's consideration of comments received in the rulemaking.

Consistent with DOE Notice 440.1, this final rule establishes a CBDPP that is designed to reduce the occurrence of CBD among DOE federal and contractor workers and any other individuals who perform work at DOE facilities. The CBDPP will accomplish this disease-reduction mission through provisions that: (1) Reduce the number of current workers who are exposed to beryllium by clearly identifying and limiting worker access to areas and operations that contain or utilize beryllium; (2) minimize the potential for, and levels of, worker exposure to beryllium by implementing engineering and work practice controls that prevent the release of beryllium into the workplace atmosphere and/or capture and contain airborne beryllium particles before worker inhalation; (3) establish medical surveillance to monitor the health of exposed workers and ensure early detection that makes possible early treatment of disease; and (4) establish continual monitoring of the effectiveness of the program in preventing CBD and implementing program enhancements as appropriate. Another key purpose of the rule is the collection of consistent data, which will improve the information available to better understand the cause of CBD.

DOE has made numerous changes in the final rule after considering the public comments on the proposed rule. The principal changes are as follows:

- The final rule requires responsible employers to assign a qualified individual, such as a Certified Industrial

Hygienist, to manage and supervise beryllium inventories, hazard assessments, and exposure monitoring.

- The final rule establishes the airborne beryllium concentration action level, which in this rule triggers key worker protection measures, at 0.2  $\mu\text{g}/\text{m}^3$ , instead of 0.5  $\mu\text{g}/\text{m}^3$  as proposed. The STEL has been deleted, because the proposed STEL would not provide any added protection for workers given that the new action level of 0.2  $\mu\text{g}/\text{m}^3$  would be exceeded in less than 15 minutes where exposure levels are at 10  $\mu\text{g}/\text{m}^3$ .

- The final rule provides that responsible employers must require workers to use respirators in areas where the beryllium exposure level is at or above the action level, rather than at or above the PEL as proposed in the NOPR, and must provide a respirator to any worker exposed to beryllium who requests one, regardless of the concentration of airborne beryllium.

- The final rule includes criteria and requirements to govern the release of beryllium-contaminated equipment and other items at DOE sites for use by other DOE facilities or the public.

- The final rule requires responsible employers to offer medical surveillance to any "beryllium-associated worker," defined to include any current worker who is exposed through beryllium work or who had past exposure or potential exposure to beryllium at a DOE facility.

- The final rule contains medical removal protection and multiple physician review provisions that are modeled on provisions of three of OSHA's expanded health standards.

The provisions of the rule are presented in three subparts. Subpart A describes the purpose and applicability of the rule, defines terms that are critical to the rule's application and implementation, and establishes DOE and contractor responsibilities for executing the rule. Subpart B establishes administrative provisions requiring responsible employers to develop and maintain a CBDPP and to perform all beryllium-related activities according to the CBDPP. Subpart C establishes requirements for the content and implementation of the CBDPP. Some of the provisions of Subpart C apply only when it is determined that the airborne concentration of beryllium in a specific workplace or operation rises above a specified limit. Table 8 summarizes these provisions and indicates the levels of beryllium at which the provisions apply.

TABLE 8.—LEVELS AT WHICH THE PROVISIONS OF THE CBDPP APPLY

Provision	Worker exposure or potential exposure levels (8-Hour TWA)		
	Be operations/locations <sup>1</sup>	≥Action level (0.2 µg/m <sup>3</sup> )	≥PEL (8-hr TWA) (2.0 µg/m <sup>3</sup> )
Baseline Inventory (850.20) .....	X	.....	.....
Hazard Assessment (850.21) .....	X	.....	.....
Initial Exposure Monitoring (850.24) .....	X	.....	.....
Periodic Exposure Monitoring (850.24) .....	.....	X	.....
Exposure Reduction and Minimization (850.25) .....	X <sup>2</sup>	X <sup>3</sup>	X <sup>4</sup>
Regulated Areas (850.26) .....	.....	X	.....
Hygiene Facilities and Practices (850.27) .....	.....	X	.....
Respiratory Protection (850.28) .....	X <sup>5</sup>	X	.....
Protective Clothing and Equipment (850.29) .....	X <sup>6</sup>	X	.....
Housekeeping (850.30) .....	X <sup>7</sup>	.....	.....
Release Criteria (850.31) .....	X <sup>8,9</sup>	.....	.....
Medical Surveillance (850.34) .....	X <sup>10</sup>	.....	.....
Training and Counseling (850.37) .....	X <sup>11</sup>	.....	.....
Warning Signs (850.38) .....	.....	X	.....

<sup>1</sup> Applies to beryllium operations and other locations where there is a potential for beryllium contamination.

<sup>2</sup> Responsible employers must implement actions for reducing and minimizing exposures, if practicable.

<sup>3</sup> Responsible employers must establish a formal exposure reduction and minimization program, if practicable.

<sup>4</sup> Responsible employers must reduce exposures to or below the PEL.

<sup>5</sup> Responsible employers must provide respirators when requested by the worker.

<sup>6</sup> Responsible employers must provide protective clothing and equipment where surface contamination levels are above 3 µg/100 cm<sup>2</sup>.

<sup>7</sup> Housekeeping efforts must maintain removable surface contamination at or below 3 µg/100 cm<sup>2</sup> during non-operational hours.

<sup>8</sup> Removable contamination on equipment surfaces must not exceed 0.2 µg/100 cm<sup>2</sup> when released to the public or for non-beryllium use.

<sup>9</sup> Removable contamination on equipment surfaces must not exceed 3 µg/100 cm<sup>2</sup> when released to other beryllium handling facilities.

<sup>10</sup> Responsible employers must provide medical surveillance for all beryllium-associated workers.

<sup>11</sup> Training is required for all workers who could be potentially exposed. Counseling is required for beryllium-associated workers diagnosed with CBD or beryllium sensitization.

#### IV. Section-by-Section Discussion of Comments and Rule Provisions

This section of the Supplementary Information responds to significant comments on specific proposed rule provisions. It also contains explanatory material for some final rule provisions in order to provide interpretive guidance to DOE offices and DOE contractors that must comply with this rule. All substantive changes from the notice of proposed rulemaking (NPR) are explained in this section. However, some non-substantive changes, such as the renumbering of paragraphs and changes to clarify the meaning of rule provisions, are not discussed.

DOE has determined that the requirements set forth in this final rule are those which, based on currently available data, are necessary to provide protection to workers who may be exposed to beryllium.

##### A. Subpart A—General Provisions

###### Section 850.1—Scope

The CBDPP required by this rule will enhance, supplement, and be integrated into existing worker protection program requirements for DOE Federal and contractor employees. DOE has structured the rule this way for two main reasons: (1) to take advantage of existing and effective comprehensive worker protection programs that have

been implemented at DOE facilities; and (2) to minimize the burden on DOE contractors by clarifying that contractors need not establish redundant worker protection programs to protect workers from hazards of exposure to airborne beryllium.

###### Section 850.2—Applicability

As in the proposed rule, section 850.2 specifies that this rule applies to DOE offices and DOE contractors with responsibility for operations or activities that involve present or past exposure, or the potential for exposure, to beryllium at DOE facilities. It also applies to any current DOE employee, DOE contractor employee, or any other current worker at a DOE facility who is or was exposed or potentially exposed to beryllium at a DOE facility, regardless of which organization currently employs the worker.

Except at the few DOE-operated facilities, DOE federal workers are not usually directly involved in production tasks or other activities in which they would be exposed to airborne beryllium. However, in performing management and oversight duties, DOE federal workers may enter facilities where beryllium is handled. Federal agencies are required to ensure the protection of federal workers under the health and safety provisions of 29 CFR Part 1960, “Basic Program Elements for Federal

Employee Occupational Safety and Health Programs and Related Matters,” as well as Executive Order (EO) 12196, “Occupational Safety and Health Programs for Federal Employees.” DOE’s intent in section 850.2(a)(1) is to supplement these general worker protection requirements with specific beryllium-related requirements in the limited instances where DOE federal workers may have the potential for beryllium exposure.

Section 850.2(a)(2) specifies that the rule also applies to DOE contractors with operations or activities involving exposure or the potential for exposure to beryllium. As clarified in the definition of “DOE contractor” (section 850.3), DOE’s intent is that the contractors covered under this rule include any entity under contract to perform DOE activities at DOE-owned or -leased facilities, including contractors awarded management and operating contracts, integrating contractors, and subcontractors. This section further clarifies that the requirements of the CBDPP apply only to contractors and subcontractors who work in areas or on DOE activities that involve the potential for worker exposure to beryllium.

The provisions of this rule do not apply to former DOE workers; to activities at DOE facilities that do not involve exposure or potential exposure to beryllium; or to activities not

conducted at a DOE facility, such as the off-site laundering of beryllium-contaminated protective clothing from a DOE site.

Section 850.2(b) exempts "beryllium articles" from the rule (see the definition of "beryllium article" under section 850.3). DOE recognizes that some beryllium-containing manufactured items may not pose beryllium hazards where they have been formed to specific shapes or designs and their subsequent uses or handling will not result in the release of airborne beryllium. This exemption for beryllium articles is consistent with the approach taken by OSHA in regulating hazardous materials under the Hazard Communication standard at 29 CFR 1910.1200.

Section 850.2(c) establishes that the rule does not apply to the DOE laboratory operations involving beryllium that are subject to the requirements of OSHA's Occupational Exposure to Hazardous Chemicals in Laboratories standard, 29 CFR 1910.1450, commonly called OSHA's Laboratory standard. Three commenters (Exs. 30, 31, 32) opposed this exemption, stating that lesser protection would be afforded to laboratory workers than to those workers covered by the rule. One commenter (Ex. 30) suggested that laboratory exposures are difficult to predict and that a lack of sampling resulting from the perception that little hazard is present in laboratory settings may lead to incomplete exposure characterizations.

In establishing its Laboratory standard, OSHA clarified its intent that 29 CFR 1910.1450 supersede all other OSHA regulations for bench-top laboratory-scale activities, noting that the provisions of the standard were more relevant and suitable to the unique characteristics of laboratory activities. DOE agrees with OSHA's approach and believes that the provisions of OSHA's Laboratory standard are adequate to protect workers from beryllium exposures in facilities that fall within the scope of the standard.

DOE notes the laboratory exemption only applies in instances where relatively small quantities of beryllium are used in a non-production activity. In addition, OSHA's Laboratory standard has specific provisions to ensure that protective laboratory practices are followed. Many of the provisions in OSHA's Laboratory standard are the same as, or similar to, those in this final rule. For instance, OSHA's Laboratory standard establishes provisions for identifying the presence of hazardous chemicals (baseline inventory), establishing a chemical hygiene plan

(hazard assessment), performing periodic monitoring at the action level, implementing exposure reduction measures at the PEL, training employees on related hazards, and providing employees the opportunity for medical consultation and examination. In part because each of these aspects of the beryllium rule is already included in the OSHA Laboratory standard, DOE has retained the laboratory operations exemption in section 850.2(b)(2).

#### Section 850.3—Definitions

Commenters on the proposed rule's "Definitions" section typically requested clarification or modification of the proposed definitions.

*New terms.* In response to public comment, the following additional terms have been defined in section 850.3: "beryllium-associated worker," "Head of DOE Field Element," "removable contamination," "responsible employer," and "unique identifier." A discussion of each term is included in the alphabetical listing of definitions provided below.

*Terms and definitions deleted.* In response to public comment, the following definitions in the NPR are deleted in the final rule: "accepted applicant," "short term exposure limit (STEL)," and "surface contamination." The deletions are explained in the section-by-section discussion of the rule provisions in which the terms were previously used.

Section 850.3 defines key terms using traditional industrial hygiene terminology and terminology used by OSHA in its regulations. The use of such terminology is consistent with DOE's increased emphasis on industrial hygiene compliance through the use of accepted occupational safety and health requirements and procedures. The following discussion explains the definitions in the rule. Although some of these terms are commonly used, DOE believes that these definitions will help ensure that their meaning as used in the context of the rule is clear.

Action level means the level of airborne concentration of beryllium established pursuant to Subpart C, which, if met or exceeded, requires the implementation of certain specified provisions of the rule. Using an action level to trigger certain provisions of the rule is consistent with the approach applied in many of OSHA's substance-specific standards. The word "exceeded" was amended to read "met or exceeded" in the final rule to clarify DOE's intent that worker protection provisions must be implemented in cases where worker exposure levels are

measured at, as well as above, the action level.

Authorized person means any person required by work duties to be in regulated areas. The concept of authorized person is consistent with OSHA standards and with contractor practice in many DOE facilities, and is intended to ensure that the population of potentially exposed individuals is reduced to the lowest possible number and that workers who are granted access to regulated areas have the knowledge they need to protect themselves and other workers. Under this rule, authorized individuals are to be trained in the hazards of beryllium and in the means of protecting themselves and those around them against such hazards. Training requirements for individuals working with beryllium are specified in section 850.37 of the rule. DOE did not receive any comments on this definition, which remains unchanged in the final rule.

Beryllium means elemental beryllium and any insoluble beryllium compound or alloy containing 0.1 percent beryllium or greater that may be released as an airborne particulate. This definition of beryllium reflects the focus of this rule on worker exposure to airborne beryllium. One commenter (Ex. 26) questioned whether exposure to naturally occurring beryllium compounds in excess of 0.1 percent was covered by the DOE program. However, as correctly noted by the same commenter, sections 850.2(a)(1) and (2) provide that the rule only applies to exposures and potential exposures to beryllium that occur in connection with facility operations. Another commenter (Ex. 10) suggested that 0.1 percent beryllium was too inclusive, and suggested that a level of 0.5 percent be used instead. DOE notes, however, that the concentration specified in the definition is consistent with the criterion that OSHA uses for a carcinogenic mixture, i.e., one that contains a carcinogenic component at a concentration of 0.1 percent (or 1,000 parts per million [ppm]) or greater, by weight or volume. Therefore, DOE has not changed the definition in the final rule.

Beryllium activity means an activity performed for, or by, DOE at a DOE facility that can expose workers to airborne concentrations of beryllium. Activities within the scope of this definition may involve design, construction, operation, maintenance, and decommissioning. The definition further explains that a "beryllium activity" may involve one DOE facility or operation, or a combination of facilities and operations. This definition

is broad enough to include activities such as repair work performed by support-service subcontractors who visit the site infrequently. DOE did not receive comments on this proposed definition. However, DOE modified the language to clarify that maintenance operations are within the scope of the term.

Beryllium article means a manufactured item that is formed to a specific shape or design during manufacture, that has end-use functions that depend in whole or in part on the item's shape or design, and that does not release beryllium or otherwise result in exposure to airborne concentrations of beryllium under normal use conditions. DOE has included this definition of "beryllium article" to distinguish between forms of beryllium that may result in exposure to airborne beryllium and manufactured items containing beryllium that do not release beryllium or otherwise result in exposure to airborne concentrations of beryllium. All of the persons (Exs. 9, 26, 30, 31) commenting on this definition agreed that exempting beryllium articles from the program is a logical approach. Two of these commenters (Exs. 9, 26) stated that an item destined for machining should be considered a beryllium article up to the time of that machining. In response to these comments DOE notes that the beryllium article definition is consistent with the approach employed by OSHA in formulating its definition of "article" in the Hazard Communication standard (29 CFR 1910.1200). The key concept is that an article, if used as intended, does not have the potential to result in hazardous exposures. However, an item ceases to be an "article" when it is subjected to machining, cutting, drilling, or similar action other than its intended end use. Similarly, if an item is manufactured for the purpose of being machined later, it is not considered an article. Another commenter (Ex. 31) suggested that examples of activities that could release beryllium, such as burning, grinding and chipping, be included in a parenthetical listing in the definition. DOE recognizes that there are many activities that could lead to a release, and is concerned that providing examples could be interpreted to exclude other activities. To avoid such confusion, DOE believes that examples should not be included in the definition, but rather should be included in a companion implementation guide for the rule.

Beryllium-associated worker means a current worker who is or was exposed or potentially exposed to airborne concentrations of beryllium at a DOE

facility. This individual may be a DOE Federal or contractor worker, an employee of a subcontractor to a DOE contractor, or a visitor who, pursuant to a DOE-approved arrangement, performs work at a DOE facility. This definition clarifies DOE's intent that the rule applies only to current workers. The definition further clarifies that current workers who have been removed from beryllium exposure as part of the medical removal plan are beryllium-associated workers under the rule, but they are not "beryllium workers" (see definition of "beryllium worker").

Beryllium emergency means any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations, that unexpectedly releases a significant amount of beryllium. This definition is particularly important when determining appropriate emergency response procedures that fall within the scope of OSHA's Hazardous Waste Operations and Emergency Response standard, 29 CFR 1910.120. This definition is based on OSHA's interpretation of the term "emergency" as applied in 29 CFR 1910.120 and refers to any untoward event, such as a major spill of powdered beryllium or an unexpected upset that releases a significant amount of beryllium into the workplace atmosphere. Two commenters (Exs. 24, 31) expressed concern that the term "significant release" was open to too much interpretation and needed further clarification. Emergency situations, by their very nature, are difficult to anticipate and describe. DOE believes that the examples listed provide a general indication as to what constitutes a significant release. The use of the term "beryllium emergency" is used in section 850.33, which requires DOE contractors to develop emergency procedures and training to address emergency scenarios.

Beryllium-induced lymphocyte proliferation test (Be-LPT) means an *in vitro* measure of the beryllium antigen-specific, cell-mediated immune response. This test measures the extent to which lymphocytes, a class of white blood cells, respond to the presence of beryllium by replicating in the laboratory. Medical personnel use the Be-LPT to identify workers who have become sensitized to beryllium through their occupational exposure. DOE did not receive any comments on this proposed definition, which remains unchanged in the final rule.

Beryllium worker means a current worker who is regularly employed in a DOE beryllium activity. Section 850.3 of the NOPR defined "beryllium worker"

as "a current worker who is exposed or potentially exposed to airborne concentrations of beryllium at or above the action level or above the STEL or who is currently receiving medical removal protection benefits." This proposed definition included DOE Federal or contractor workers, workers employed by a subcontractor to a DOE contractor and visitors performing work at DOE facilities. Consistent with other provisions of the proposed rule, DOE intended this definition to apply only to current workers. DOE specifically stated in the NOPR that former workers would not be included in the proposed "beryllium worker" definition, but instead would be addressed under a separate initiative.

DOE received eight comments on the definition of "beryllium worker" in the proposed rule. Five commenters (Exs. 2, 14, 16, 17, 28) stated that the term beryllium worker was too limiting. These commenters argued that the proposed definition of beryllium worker should not be limited to those workers exposed to levels of beryllium at or above the action level, but rather should include all workers with the potential for beryllium exposure. Three commenters (Exs. 2, 14, 28) supported this position by noting that current scientific evidence does not suggest a "safe" level of beryllium exposure, and that CBD has been identified in individuals thought to have only low or incidental exposure to beryllium. DOE shares this concern, and has omitted the reference to the action level from the definition of "beryllium worker" in the final rule. DOE has revised the definition in the final rule to apply to each "current worker who is regularly employed in a DOE beryllium activity."

These same five commenters (Exs. 2, 14, 16, 17, 28) also argued that medical surveillance should be offered to all individuals with beryllium exposure and that the beryllium worker definition, therefore, should be expanded to include reassigned and former workers with prior beryllium exposure. These commenters were concerned that restricting medical surveillance to "beryllium-workers," as defined in section 850.3 of the proposed rule, would exclude workers with incidental beryllium exposure who also may be at risk of contracting CBD.

Two commenters (Exs. 2, 28) questioned the need for separate medical surveillance programs for former and current beryllium workers. These two commenters raised the issues of increased cost, lack of continuity, and the added confusion to participants associated with maintaining separate surveillance programs.

In response to these comments, DOE added the term "beryllium-associated worker," which is more inclusive than the term "beryllium worker." (See definition of "beryllium-associated worker.") The term "beryllium-associated worker" is used in provisions of the rule where DOE has determined that coverage should not be limited to workers regularly employed in DOE beryllium activities. Use of the term "beryllium-associated worker" clarifies DOE's intent that current employees with past beryllium exposures or potential exposures, as well as current individuals who are exposed to airborne beryllium at DOE facilities, be included under the following rule provisions: 850.5 (dispute resolution), 850.10 (development and approval of the CBDPP), 850.33 (medical surveillance), 850.34 (medical removal), 850.35 (medical consent), 850.36 (training and counseling) and 850.39 (beryllium registry).

DOE, however, has not expanded the definition to include former workers. DOE previously established the Former Beryllium Workers Medical Surveillance Program and offers medical examinations to former (retired and separated) workers who are at risk for developing CBD due to their work at DOE. The elements of the Former Beryllium Workers Medical Surveillance Program are: (1) identification of beryllium workers who have retired or separated from employment; (2) notifying workers of their eligibility to participate in the program, and general announcements to provide former workers an opportunity to self-identify as a former beryllium worker; (3) informed consent on the risks and benefits of participating in the program; (4) screening for CBD using the Be-LPT, a standardized questionnaire on respiratory symptoms, and a chest radiograph if indicated by responses to the questionnaire; (5) an offer of diagnostic medical examinations to individuals found to have either a positive Be-LPT or signs or symptoms of CBD; (6) periodic medical monitoring; (7) funds for medical care that is not covered by insurance; and (8) epidemiologic surveillance to identify high risk operations where additional primary preventative actions are needed.

One commenter (Ex. 23) took issue with the phrase "potentially exposed" in the proposed definition of "beryllium worker," arguing that it is too vague and could allow too much room for individual interpretation. DOE believes that limiting the definition to workers with actual personal exposure monitoring results at or above a

specified airborne level would unnecessarily limit responsible employers' options for meeting the exposure monitoring requirements of this rule. For instance, if the phrase "potentially exposed" were removed from the definition, the use of representative sampling would no longer be an acceptable option for meeting the exposure monitoring requirements in the rule. Employers would be required to determine actual exposures for all workers to determine whether the workers are beryllium-associated workers. DOE believes that such an inflexible requirement would be burdensome and inconsistent with sound industrial hygiene practices and the provisions of section 850.21 of the rule, which requires qualified industrial hygienists to apply their professional knowledge and experience in the performance of beryllium hazard assessments. Accordingly, the final rule (in the definitions of "beryllium-associated worker" and "beryllium activity") requires responsible employers to consider potential exposures in identifying beryllium workers.

Another commenter (Ex.16) stated that the proposed definition of "beryllium worker," as applied in determining a worker's eligibility to participate in the medical surveillance program, could be too narrow in some respects and too broad in others. This commenter favored including current workers no longer working with beryllium and those with exposures below the action level in the definition of "beryllium worker." This commenter recommended allowing the industrial hygiene and medical staff to use a "graded approach" to determine which workers received medical surveillance, based on the needs of the individual and "common sense judgement about cost and benefit." DOE agrees that current workers no longer working with beryllium and those with exposures below the action level should be eligible for medical surveillance and, thus, has included such individuals in the final rule's definition of "beryllium-associated workers." DOE does not agree, however, that determining whether a worker should receive medical surveillance should be left to the discretion of the industrial hygiene and medical staff. DOE believes that such discretionary application of medical surveillance will result in an inconsistent level of protection for workers across the DOE complex. Therefore, section 850.34 of the final rule requires responsible employers to develop and implement a medical

surveillance program for all beryllium-associated workers (see discussion of section 850.34).

Breathing zone is the hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches. This definition is used principally in section 850.24, Exposure Monitoring, which requires DOE contractors to determine worker exposures to beryllium by monitoring for the presence of contaminants in the worker's personal breathing zone. One commenter (Ex. 9) stated that this proposed definition was imprecise. DOE disagrees and views this definition as being consistent with sound and accepted industrial hygiene practice. It will ensure that samples collected for personal exposure monitoring represent the air inhaled by workers while performing their duties in affected work areas. Therefore, DOE has not revised this definition in the final rule.

DOE means the Department of Energy. DOE contractor means any entity under contract with DOE, including a subcontractor, with responsibility for performing DOE activities at DOE-owned or -leased facilities. This term does not apply to a contractor or subcontractor who provides only "commercial items" as defined under the Federal Acquisition Regulations (FAR). Such contractors would not be performing DOE beryllium activities. As explained in the discussion of section 850.10, subcontractors who are covered under the rule normally will not be designated to prepare the written CBDPP for a site. However, these subcontractors will be included in the CBDPP that encompasses all beryllium-related activities at the site.

DOE facility means any facility operated by or for DOE, whether owned or leased by DOE.

Head of DOE Field Element is the high-level DOE official in a DOE field or operations office who has the responsibility for identifying the contractors and subcontractors covered by this part and for ensuring compliance with this part.

High-efficiency particulate air (HEPA) filter means a high-efficiency filter capable of trapping and retaining at least 99.97 percent of 0.3-micrometer monodisperse particles. Such filters are commonly used in heating and ventilating systems, respiratory protection equipment, local exhaust ventilation, etc., to remove toxic or hazardous particulates like beryllium.

Immune response refers to the series of cellular events by which the immune system reacts to a specific antigen. Types of immune responses include acquired immunity and sensitization.

The body's immune response to beryllium is sensitization and is indicated by the results of the Be-LPT.

Medical removal protection benefits are employment rights established in section 850.35 for beryllium-associated workers temporarily or permanently subject to medical removal from working in regulated areas following medical evaluations. These provisions give contractors an incentive to make reasonable efforts to find and offer alternate employment to workers who have suffered negative health effects due to exposure to beryllium. The definition of medical removal protection benefits and the requirements in section 850.35 ensure that such workers would suffer no reductions in total earnings, seniority, or other worker rights and benefits for two years after permanent medical removal. The two-year period for medical removal protection benefits after permanent removal will allow the contractor to make a reasonable effort to find alternate employment for a removed worker or, through job retraining and out-placement programs operated by many sites, to locate alternate outside employment for the worker.

Regulated area means an area demarcated and managed by the responsible employer where the airborne concentration of beryllium exceeds, or can reasonably be expected to exceed, the action level (see the definition of "action level."). Employees working in regulated areas must be authorized to do so by the responsible employer, and must be trained and equipped with protective clothing and equipment. The purpose of such areas is to limit potential exposure to beryllium to as few workers as possible. Regulated areas are commonly used throughout DOE, particularly with regard to radiation protection, and their use is consistent with OSHA's expanded health standards for toxic particulates.

Removable contamination means beryllium contamination that can be removed from surfaces by nondestructive means, such as casual contact, wiping, brushing, or washing. This term was adopted from DOE's Radiological Control Manual, April 1994. One commenter (Ex. 23) stated that "surface contamination", a term defined in the proposed rule, should refer to contamination that is removable, not simply beryllium on surfaces. DOE agrees with this commenter that only removable surface contamination can become airborne and inhaled by workers, and has replaced the term "surface contamination" with "removable contamination."

Responsible employer means the DOE contractor office that is directly responsible for the safety and health of DOE contractor employees while performing a beryllium activity or other activity at a DOE facility; or for DOE employees, the DOE office that is directly responsible for the safety and health of DOE Federal employees while performing a beryllium activity or other activity at a DOE facility; and any person acting directly or indirectly for such office with respect to terms and conditions of employment of beryllium-associated workers. This definition is added to clarify DOE's intent that provisions of the final rule apply to both DOE Federal and contractor workers at DOE facilities.

Site Occupational Medical Director (SOMD) means the physician responsible for the overall direction and operation of the site occupational medicine program. DOE intends, through this definition, to ensure that a physician administers each DOE facility's occupational medicine program.

Unique identifier means a number or alphanumeric code used to identify each worker individually and distinctively while protecting the worker's privacy. Unique identifiers are used in DOE's health surveillance program to help identify the exposures each worker has experienced in the course of his or her work in a DOE facility without personally identifying the worker. The unique identifiers will allow DOE to link worker's exposure and occupational health data.

Worker means a person who performs work at a DOE facility including (but not limited to) a DOE employee, an independent contractor, or a DOE contractor employee. As clarified in the definition of "DOE contractor," an employee of a covered subcontractor is a contractor employee under this part.

Worker exposure means the airborne concentration of beryllium in the breathing zone of the worker that would occur if the worker were not using respiratory protective equipment. This definition is consistent with accepted industrial hygiene practice and with OSHA's definition of the term "employee exposure" as applied in the OSHA expanded health standards.

#### Section 850.4—Enforcement

DOE proposed that enforcement of the CBDPP requirements in Part 850 would be through contractual remedies, including contract termination or reduction in fee. Section 850.4 of the final rule adheres to this approach. This section provides that DOE may take appropriate steps under its contracts to

ensure compliance with this rule, including (but not limited to) contract termination or reduction in fee.

One union commented (Ex. 22) that the proposed enforcement provision would be inadequate because DOE is not likely to terminate a prime contractor's contract for failure to comply with health and safety requirements, and because award fee reductions are only useful if the contracting officer is aware of, and qualified to investigate, noncompliance. The union requested that the rule be enforced under DOE's nuclear safety requirement enforcement procedures in 10 CFR Part 820 or pursuant to section 3131 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (42 U.S.C. 7274d). The union also suggested that while awaiting a compliance officer, a worker should have the right to shut down the job without loss of pay.

DOE has not adopted the commenter's recommendation to enforce this rule under 10 CFR Part 820 or section 3131 of the National Defense Authorization Act for Fiscal Years 1992 and 1993. Part 820, "Procedural Rules For DOE Nuclear Activities," contains procedures for enforcement of DOE nuclear safety requirements. Beryllium is not normally considered a nuclear material, and, therefore, enforcement of this rule would not fall within the scope of Part 820. DOE also cannot enforce this rule under section 3131 of the National Defense Authorization Act because that section's scope is limited, authorizing only the imposition of civil penalties against a DOE contractor for failing to train or certify to DOE the adequacy of employee training in hazardous substance response or emergency response (42 U.S.C. 7274d(b)).

In DOE's view, the existing mechanisms and contractual remedies available for enforcing DOE contractor worker protection programs are adequate for enforcement of this rule. For instance, under DOE Order 440.1A, DOE and, to the extent incorporated into contracts, DOE contractors are required to implement worker protection programs that ensure compliance with applicable health and safety requirements. The worker protection program must provide workers with certain rights, including, among other things, the right to accompany DOE worker protection personnel during workplace inspections on official time; the right to express concerns related to worker protection; to decline to perform an assigned task based on a reasonable belief that the task poses an imminent risk of death or serious bodily harm



when there is insufficient time to obtain redress through normal reporting and abatement procedures; the right to observe monitoring or measuring of hazardous agents and have access to the results of exposure monitoring; the right to be notified if monitoring results indicate they were overexposed to hazardous materials; and the right to receive results of inspections and accident investigations upon request. These provisions of DOE Order 440.1A continue to apply under the CBDPP.

Additionally, a contractor employee is protected from retaliation for a refusal to work under certain circumstances, as specified in an interim final rule that DOE promulgated on March 15, 1999, which substantially revises 10 CFR part 708, DOE Contractor Employee Protection Program (64 FR 12862 as amended at 64 FR 37396). An employee of a contractor (or a subcontractor) may file a complaint under the "whistleblower" regulations if he or she is subject to retaliation for refusing to participate in an activity based on a reasonable fear of serious injury (10 CFR 708.5(c)).

#### Section 850.5—Dispute Resolution

In the NOPR, DOE proposed that disputes arising under this part that are brought by beryllium workers be resolved through applicable grievance-arbitration processes or, if such processes are not available, through referral to the DOE's Office of Hearings and Appeals.

A union commented (Ex. 22) that the proposal to relegate a worker to the grievance and arbitration provision of the collective bargaining agreement would be inadequate because it erroneously assumes that an arbitrator would find a final rule to be part of the collective bargaining agreement. The union stated that unless DOE required employers to propose this rule, and unions accepted it as a contract condition, an arbitrator would decline to enforce this rule. The same commenter asked that DOE clarify in the final rule that an employee representative may file grievances under a collective bargaining agreement or seek other remedies under the labor laws to compel contractor compliance or deter contractor retaliation for seeking enforcement of the rule.

A DOE contractor (Ex. 23) expressed concern that proposed section 850.5 might interfere with existing dispute resolution processes, or might violate Federal law by imposing an obligation on the employment relationship between a DOE contractor and its employees who are subject to the terms of a collective bargaining agreement.

In proposing section 850.5, DOE sought to avoid creating opportunities for workers represented by labor organizations to circumvent collective bargaining agreement procedures for resolving disputes concerning terms and conditions of employment. Thus, DOE proposed that workers use available grievance-arbitration procedures for resolution of disputes related to the subject of this rule. However, DOE agrees with the comment that an arbitrator deciding a grievance under a collective bargaining agreement might not look beyond the collective bargaining agreement in making a decision. Because this rule establishes minimum requirements that are independent of collective bargaining agreements, available grievance-arbitration procedures may not in some cases be sufficient to ensure compliance with the rule.

DOE, therefore, has modified the text of section 850.5 to permit any adversely affected person to refer a dispute regarding compliance with the rule to the Office of Hearings and Appeals for resolution, but employees who are represented by a labor organization are required first to exhaust any grievance-arbitration procedure that is available for resolving disputes over terms and conditions of employment. This is the approach DOE took in its interim final rule for the DOE Contractor Employee Protection Program, 10 CFR part 708 (64 FR 12862, March 15, 1999). Consistent with section 708.13(a) of the Contractor Employee Protection Program rule, DOE has revised section 850.5 in the final rule to provide that a worker will be deemed to have exhausted all applicable grievance-arbitration procedures if 150 days have passed after the filing of a grievance and a final decision on it has not been issued.

#### *B. Subpart B—Administrative Requirements*

Subpart B of the final rule establishes general and administrative requirements to develop, implement, and maintain a CBDPP and to perform all beryllium-related activities according to the CBDPP.

#### Section 850.10—Development and Approval of CBDPP

Section 850.10 establishes the procedures for the development and approval of the CBDPP. Section 850.10(a)(1) requires a responsible employer in charge of DOE beryllium activities to prepare a CBDPP for its operations and submit the CBDPP to the appropriate Head of DOE Field Element for approval. This section establishes a 90-day time frame from the effective

date of the rule for responsible employers' submission of the CBDPP to the appropriate Head of DOE Field Element. DOE is aware of the burden of documentation that can be generated by new programs. However, most responsible employers have already developed CBDPPs in response to DOE Notice 440.1. DOE expects the additional effort required to refine the existing CBDPPs to meet the requirements of the rule will be minimal.

Section 850.10(a)(2) requires that a single CBDPP be submitted to encompass all beryllium-related activities at a site. Because DOE recognizes that one site may encompass multiple contractors and numerous work activities, this section clarifies that the CBDPP for a given site may include specific sections for individual contractors, work tasks, etc. DOE believes that this allowance for a segmented CBDPP structure will minimize the burden associated with the CBDPP update and approval requirements because it allows individual contractors to update and submit for approval only the section of the CBDPP pertaining to their specific activities. If multiple contractors are involved, the DOE contractor designated by the Head of DOE Field Element must take the lead in compiling the overall CBDPP and coordinating the input from various other contractors, subcontractors or work activities. This section further clarifies that in such cases the designated contractor must review and approve the CBDPPs of other contractors engaged at the site before a consolidated CBDPP can be submitted to the Head of DOE Field Element for final review and approval.

One commenter (Ex. 31) stated that the rule did not clearly designate an "ultimate authority" responsible for designating physical areas covered by the rule. DOE notes that in sections 850.20 and 850.21, the responsible employer is assigned the responsibility of developing a baseline beryllium inventory and, where appropriate, conducting a beryllium hazard assessment. The actions effectively determine which areas of the facility are covered by the rule. DOE believes that the responsible employer is the most familiar with activities and operations that occur on a given DOE site and, thus, is best equipped to make this determination through the performance of the baseline beryllium inventory and hazard assessment.

Section 850.10(b) requires Heads of DOE Field Elements to review and approve CBDPPs. DOE believes that its review and approval is necessary to



ensure that each contractor's CBDPP is consistent with the requirements and objectives of this final rule. Through these sections, DOE hopes to establish clear lines of authority for review and approval of contractors' CBDPPs. One commenter (Ex. 23) was concerned that local approval of the CBDPPs by DOE field offices could lead to uneven enforcement and increased cost of compliance. DOE does not agree with this assessment, and believes that the Head of DOE Field Element is not only responsible for operations within his or her jurisdiction, but is also familiar with the operations and any related special circumstances or unique situations that may affect implementation or effectiveness of the CBDPP. Thus, DOE believes the Head of DOE Field Element is the most appropriate DOE approval authority for CBDPPs. DOE notes, however, that mechanisms exist to provide independent oversight of DOE's field organizations. Specifically, the Office of Oversight within the Office of Environment, Safety and Health is charged with providing information and analysis needed to ensure that DOE's top management officials, Congress and the public have an accurate and comprehensive understanding of the effectiveness, vulnerabilities, and trends of DOE's environment, safety, health, nuclear safeguards, and security policies and programs. DOE believes that this independent oversight will help assure consistency among CBDPPs across the complex.

Section 850.10(b)(1) establishes a 90-day period for DOE to review and either approve or reject the CBDPP. During its review, DOE may direct the contractors to modify the CBDPP. If DOE takes no action within 90 days, the initial CBDPP is considered approved. DOE established this 90-day time frame to facilitate timely implementation of program elements by responsible employers and to ensure that Heads of DOE Field Elements respond to responsible employers' submissions.

One commenter (Ex.18) stated that labor organizations should receive initial and updated CBDPPs. DOE notes that proposed section 850.10(b)(2) would require contractors to give interested DOE offices, affected workers, and designated worker representatives a copy of the CBDPP, upon request. This provision is retained in section 850.10(b)(2) of the final rule. This section ensures that workers and their representatives have access to information that is related to the protection of their health during the performance of DOE activities.

Section 850.10(c) requires responsible employers to update the written CBDPP

in two circumstances: (1) whenever a significant change or addition is made to the program, and (2) whenever a contractor or subcontractor changes. DOE believes that such updates are warranted to ensure that the CBDPP accurately reflects workplace conditions and appropriately addresses specific workplace beryllium exposure hazards.

This section also requires that responsible employers review their written CBDPPs at least annually and revise these programs as necessary to reflect any significant changes. Only those sections of the CBDPP that require a change will have to be resubmitted to the Head of DOE Field Element for approval. DOE considers the annual review cycle to be appropriate and necessary to ensure that CBDPPs remain up-to-date and that they accurately reflect workplace conditions and required control procedures.

Section 850.10(d) ensures that CBDPPs are developed and implemented consistent with the requirements imposed by the National Labor Relations Act (NLRA), 29 U.S.C. 141 *et seq.*, on employers in this context, and not to create obligations in excess of those that would be found in such circumstances under the NLRA.

#### Section 850.11—General CBDPP Requirements

Section 850.11 establishes the general requirements of the CBDPP. Section 850.11(a) specifies that the CBDPP must address all existing and anticipated operational tasks that fall within its scope. In addition, the section requires all responsible employers to develop and implement a CBDPP that is integrated into DOE's existing worker protection program. By including this provision, DOE notes the importance of controlling beryllium hazards within the framework of the worker protection program established under DOE Order 440.1A (or, if applicable, under predecessor orders) and related DOE health and safety initiatives. The existing industrial hygiene and occupational medicine programs provide the basis for protecting DOE Federal and contractor workers from health hazards like beryllium exposure. DOE believes that establishing a beryllium exposure control program outside the framework of this accepted program may create redundant and potentially inconsistent requirements.

One commenter (Ex. 23) stated that the proposed requirement to specify in the CBDPP existing and planned operational tasks within the scope of the rule would not be feasible for decontamination and decommissioning (D&D) closure sites. This commenter

argued that, due to the non-routine and unpredictable nature of D&D projects, identifying D&D tasks in the CBDPP would result in unnecessary costs, project delays, and administrative burdens because the CBDPP would have to be constantly updated. DOE strongly disagrees, and believes that identifying operational tasks within the scope of the CBDPP at D&D closure sites is practical and necessary. The non-routine and unpredictable nature of operations on D&D closure sites often makes such operations more hazardous than routine production operations involving beryllium. DOE believes that the appropriate way to protect workers from this increased hazard potential is through the implementation of the structured assessment, planning, and control provisions of the CBDPP. Based on experience under the interim CBDPP policy, DOE believes the CBDPP is feasible for D&D operations. DOE also notes that OSHA's Hazardous Waste Operations and Emergency Response standard, 29 CFR 1910.120, requires employers at hazardous waste remediation sites, in addition to conducting ongoing task-specific hazard analyses, to develop a site specific safety and health plan that addresses existing and planned activities. Thus, DOE has retained this requirement in the final rule.

Section 850.11(b) requires responsible employers to tailor the scope and content of their CBDPPs to the specific hazards associated with the DOE beryllium activities being performed. In addition, section 850.11(b)(1) requires that these programs include formal plans outlining how responsible employers will ensure that occupational exposures to beryllium are maintained at or below the PEL (8-hour TWA PEL of 2  $\mu\text{g}/\text{m}^3$ ).

Section 850.11(b)(2) further specifies that the responsible employer's CBDPP must, at a minimum, address each requirement in Subpart C of the rule. Section 850.11(b)(3) clarifies that the CBDPP provisions must focus on: (i) Minimizing the number of current workers exposed and potentially exposed to beryllium; (ii) minimizing the number of opportunities for workers to be exposed to beryllium; (iii) minimizing the disability and lost time experienced by workers due to CBD, beryllium sensitization, and associated medical care; and (iv) setting challenging exposure reduction and minimization goals to facilitate the minimization of worker exposures. DOE believes that the establishment of exposure reduction and minimization goals is essential to the success of the CBDPP and in moving toward the

ultimate goal of preventing CBD within the DOE complex.

DOE is sensitive to concerns that exist within its community regarding the need to approach exposure reduction and minimization objectives in a responsible and realistic manner. Accordingly, section 850.11(b)(3)(iv) establishes a performance-based requirement that will allow responsible employers to establish their own exposure reduction and minimization goals tailored to their unique workplace needs and conditions, subject to DOE review and approval pursuant to section 850.10(b). DOE intends for responsible employers to establish reasonable, but challenging, goals based on sound industrial hygiene principles and the specific circumstances for each affected DOE workplace and location. DOE expects responsible employers to consider, in establishing these goals, the current level of worker exposures, the number of workers exposed, the existing controls that are in place, the technical feasibility and exposure reduction potential of possible additional controls, and the cost and operational impact of the controls.

#### Section 850.12—Implementation

Proposed in section 850.12 required responsible employers to manage and control beryllium exposures in all DOE beryllium activities consistent with the approved CBDPP, the rule, or any other program, plan, schedule or other process established by this part, as well as requirements in other applicable Federal statutes and regulations. One commenter (Ex. 16) believed that the preceding requirement should be changed to state that DOE and contractor personnel follow the CBDPP only. This commenter's concern was that including all applicable programs, plans, etc., was too broad. DOE agrees and has deleted including all applicable programs, plans, etc., from the final rule.

Section 850.12(c) clarifies DOE's position that tasks involving potential beryllium exposure that are not covered under the CBDPP may not be initiated until the CBDPP has been updated to include them and the updated plan has been approved by the appropriate Head of DOE Field Element. The rule provides an exception to this requirement for urgent and unexpected situations. In such cases, the task could proceed with the written approval from the Head of DOE Field Element prior to the CBDPP being revised and approved. One commenter (Ex. 16) sought clarification as to when a change in the CBDPP was required. This commenter proposed that when new beryllium

activities require additional controls and/or procedures, a change in the CBDPP is warranted. Also, when new activities are within the range of potential exposures to beryllium as described in the existing CBDPP, the commenter suggested that no revision should be necessary. DOE's position is consistent with the views of this commenter. In general, only those activities outside the scope of the existing CBDPP would require a revision to the CBDPP.

Section 850.12(d) recognizes that, depending on the circumstances of the work, responsible employers may have to take other actions to protect their workers, and DOE does not intend to preclude such actions by the provisions of the rule. DOE recognizes that individuals responsible for implementing CBDPP activities must use their professional judgment in protecting the health and safety of workers. Nothing in the rule should be viewed as relieving these individuals of their professional responsibility to take whatever actions are warranted to protect the health and safety of the workforce.

#### Section 850.13—Compliance

Section 850.13(a) requires responsible employers to conduct DOE activities involving beryllium in compliance with their respective CBDPP that has been approved by the Head of DOE Field Element. Through this provision, DOE recognizes that even the best CBDPP will not adequately protect workers if it is not followed at the site. Section 850.13(b) requires that once the rule takes effect, responsible employers have 2 years to fully implement all aspects of the program (written plans, schedules, and other measures). Although DOE seeks to lessen the burden on responsible employers by permitting them to phase in costly controls over the 2-year period, DOE expects employers to implement portions of the program as soon as practical during the 2-year period.

Section 850.13(c) provides that the responsible employer in charge of an activity involving a potential for beryllium exposure is responsible for complying with the rule. When no contractor is responsible for the activity and Federal employees perform the activity, this section requires DOE to be responsible for compliance.

#### Subpart C—Specific Program Requirements

Subpart C of this rule establishes performance-based requirements for the CBDPP. These requirements are designed principally to prevent CBD by

reducing the number of workers exposed to beryllium, minimizing the potential level of beryllium in the workplace atmosphere, and continually monitoring worker health to ensure that workplace controls are sufficiently protective. DOE expects implementation of the rule to increase its understanding of the development and course of CBD, which may lead DOE, at some future date, to propose modifications of this rule.

#### Section 850.20—Baseline Beryllium Inventory

Section 850.20(a) requires responsible employers to develop a baseline beryllium inventory. By developing the baseline inventory, responsible employers will accomplish the following functions that are critical to the success of the CBDPP: (1) Identification of locations and operations that should be physically isolated from other areas to prevent the spread of contamination, (2) identification of areas in which worker access should be restricted to minimize the number of workers who could be exposed, (3) identification of beryllium contamination that must be controlled in facilities that are scheduled for decontamination and decommissioning, (4) identification of beryllium contamination in facilities that are being used for non-beryllium activities, to determine the need for cleanup, and (5) the determination of which workers should be covered under the CBDPP.

Section 850.20(b) supplements the generic inventory requirement under DOE Order 440.1A by requiring responsible employers to review current and historical records, interview workers, and sample as necessary to document the characteristics and locations of beryllium at DOE sites. These supplemental requirements are necessary because those persons who are responsible for activities at DOE sites may not recognize that activities under their supervision involve beryllium or are conducted in areas where beryllium was used in the past. Workers often know of past beryllium activities for which no records exist. Sampling can identify beryllium contamination where the record reviews and worker interviews are not conclusive. These supplemental requirements are particularly necessary because past beryllium operations at DOE facilities were often conducted in uncontrolled work areas.

Section 850.20(b)(3) requires that responsible employers conduct air, surface, and bulk sampling procedures to characterize the beryllium. Characterizing the beryllium is

necessary to assess and control beryllium workplace hazards. Responsible employers should conduct the sampling that is appropriate for the specific workplace conditions and the suspected types and locations of beryllium contamination. Sampling techniques could include collecting area and wipe samples and collecting personal breathing zone samples. (Sections 850.24(a), (b), and (e)-(g) address the personal monitoring that may be a component of the baseline inventory.)

Section 850.20(c) requires responsible employers to ensure that individuals conducting the baseline beryllium inventory activities have sufficient qualifications in industrial hygiene. DOE believes that this provision is necessary to ensure that the inventory is accurate and complete. DOE requested in the NOPR that interested parties submit comments on the need to provide further specification in the rule regarding the minimum qualifications that an individual must possess to perform certain components of the CBDPP, such as hazard assessments and exposure monitoring. One alternative approach suggested was use of OSHA's "competent person" definition to define competency of the individual. Another alternative was to require that hazard assessments and exposure monitoring be performed by a "certified industrial hygienist" (CIH) as defined by the American Board of Industrial Hygiene (ABIH).

DOE received 14 comments in response to this request. Two of the 14 commenters (Exs. 4, 16) agreed with DOE's approach in proposed sections 850.20(c), 850.21(b) and 850.24(a). A commenter (Ex. 16) noted that if more prescriptive definitions are used to define personnel qualifications, the definitions should be appropriate to the required task. For instance, CIHs should conduct hazard assessments, while individuals possessing a lower level of knowledge should conduct exposure monitoring. Another commenter (Ex. 4) favored the use of OSHA's "competent person" definition over requirements for a CIH if DOE elected to use one of these more prescriptive definitions.

Two commenters (Ex. 20, 29) stated that the industrial hygiene competency requirements in proposed sections 850.20(c), 850.21(b) and 850.24(a) were too subjective and recommended instead, the use of OSHA's "competent person" definition. A commenter (Ex. 20) further noted that OSHA's Asbestos Standard, 29 CFR 1926.1101(b), included definitions for "competent person," "industrial hygienist," and "certified industrial hygienist" and

outlined specific training courses that a competent person must complete. Two other commenters (Exs. 3, 31) favored the use of OSHA's "competent person" definition in lieu of the industrial hygiene competencies, but took exception to the last phrase of the definition: "and who has the authorization to take prompt corrective measures to eliminate [hazards]." The commenters were concerned that limiting the performance of assessments and monitoring to individuals with the authority to take prompt corrective actions would exclude other qualified individuals, such as third-party industrial hygienists.

Nine of the 14 commenters recommended that a CIH participate at some level in the performance of beryllium inventories, hazard assessments, and exposure monitoring. One commenter (Ex. 30) stated that monitoring and assessments must be performed by a CIH, while the other commenters (Exs. 3, 11, 13, 16, 19, 26, 28, 31) suggested that qualified and trained persons working under the direct supervision of a CIH could conduct these tasks, and that limiting the actual performance of monitoring and assessments to CIHs would be too restrictive and unnecessary. Although these commenters did not believe that a CIH is needed to actually perform monitoring and assessments, many did believe that minimum qualifications for those individuals performing these tasks must be specified in the final rule. For instance, one commenter (Ex. 11) recommended that DOE require that these individuals possess sufficient industrial hygiene experience in addition to knowledge. Another commenter (Ex. 13) suggested that a CIH, Industrial Hygienist in Training (IHIT) as defined by the ABIH, or person with "demonstrably equivalent qualifications" perform assessments and monitoring. Another commenter (Ex. 23) suggested that the industrial hygienist definitions in DOE's "Functional Area Qualification Standard," or as defined by AIHA, be used to prescribe the qualifications required to perform monitoring and assessments.

DOE agrees with the overwhelming majority of commenters who favored a more prescriptive definition. DOE believes that a more prescriptive definition will ensure proficiency and consistency in the conduct of assessments and monitoring as well as in the overall implementation of the CBDPP. Accordingly, DOE has provided language in sections 850.20(c), 850.21(b) and 850.24(a)(1) of the final rule for the use of qualified individuals such as a CIH to manage and supervise beryllium

inventories, hazard assessments, and exposure monitoring, and the use of individuals with sufficient industrial hygiene knowledge and experience to actually perform these tasks. DOE believes this will provide the level of consistency required to ensure that hazards are properly identified and workers are appropriately protected without being overly prescriptive. In this regard, DOE agrees with the commenters who stated that the level of expertise needed to perform beryllium inventories, hazard assessment, and exposure monitoring does not require a CIH, and that such a requirement would cause an unnecessary resource strain on both DOE and its contractors.

Five persons commented on other provisions of the proposed baseline inventory section. Three of the commenters (Exs. 9, 21, 28) suggested that DOE provide in the final rule greater specificity than DOE proposed for baseline inventory requirements. DOE agrees with these commenters and in the final rule has modified the requirement for reviewing records to cover both current and historical records. The final rule also modifies the requirement for conducting sampling to specify air, surface, and bulk sampling. DOE believes that these changes clarify DOE's intent, express good industrial hygiene practice, and continue to allow the responsible employer appropriate flexibility in conducting the baseline inventory. One commenter (Ex. 9) suggested that DOE also specify in the final rule that baseline inventories include the locations where beryllium activities are planned. DOE considers locations where beryllium activities are planned to be locations of potential beryllium contamination and exposure that must be included in the baseline inventory under paragraph (a), and, therefore, no change is needed.

One commenter (Ex. 18) recommended that the final rule mandate the disclosure of health and safety documents related to past beryllium emissions and exposures. DOE has not included such a provision in the final rule because the Freedom of Information Act (5 U.S.C. 552) already provides for the release of federal government records, except for specified types of records that contain sensitive information, such as classified information relating to national defense or foreign policy, information in personnel and medical files, and trade secrets or other confidential business information. Requests to DOE for release of information related to past beryllium use and exposures may be submitted to the appropriate DOE field office. Such requests should follow DOE's

procedures for Freedom of Information Act requests in 10 CFR Part 1004. Also see the discussion of public access to beryllium records in the preamble discussion of section 850.39 (Recordkeeping and use of information).

The same commenter (Ex. 18) recommended that the final rule provide for independent review of the responsible employer's implementation of the CBDPP. DOE does not think that such a provision is necessary, because existing mechanisms already provide independent oversight of DOE's contractors and include independent oversight of DOE's field organizations. The DOE Office of Environment, Safety and Health's Office of Oversight is charged with providing information and analysis needed to ensure that DOE's top management officials, Congress, and the public have an accurate and comprehensive understanding of the effectiveness, vulnerabilities, and trends of DOE's environment, safety, health, nuclear safeguards, and security policies and programs. In addition, any interested individual or organization may conduct a review of a responsible employer's compliance with this rule based on information obtained from DOE.

One commenter (Ex. 14) recommended that the final rule provide funding for the baseline inventory, and contended that responsible employers will not conduct the baseline inventories unless the funding required for this task is explicitly established by the final rule. DOE does not require its contractors to perform unfunded tasks, but funding of DOE programs is appropriately handled through the federal government's budget process and not through the regulatory process. DOE expects that its program offices will request the funds needed to meet the obligations and objectives of their programs and activities, including compliance with the CBDPP.

#### Section 850.21—Hazard Assessment

Because the identification of the possible presence of beryllium in a workplace does not, in and of itself, suffice to determine whether a hazard exists or whether various control measures must be employed, section 850.21 of the final rule requires responsible employers to conduct a beryllium hazard assessment to characterize workplace beryllium exposure hazards. This requirement allows each site the flexibility to determine the appropriate risk-based approach for assessing beryllium-related hazards in its worksites where the baseline inventory has established that beryllium is present. As noted by one

commenter (Ex. 25), flexibility in conducting hazard assessments is particularly important because operations, conditions, and the potential for exposure may vary greatly from operation to operation and facility to facility.

Section 850.21(a) requires the responsible employer to conduct an analysis of existing worksite conditions, exposure data, medical surveillance trends, and the exposure potential of planned activities. In addition, section 850.21(a) specifies that the responsible employer must prioritize potential exposure activities so that the activities with the greatest risks of exposure are evaluated first. DOE believes that prioritizing activities is a logical first step in initiating a hazard assessment. Targeting high-risk beryllium operations is an effective way to reduce potential beryllium exposures throughout DOE facilities.

Section 850.21(b) requires responsible employers to ensure that hazard assessments are managed by qualified individuals (e.g., a CIH), and that the individuals assigned to conduct hazard assessments have sufficient knowledge and experience to perform such activities properly. DOE requested in the NPR that interested persons submit comments on the need to further specify in the rule the minimum qualifications that an individual must possess to perform certain key components of the CBDPP, such as hazard assessments. DOE received 14 comments in response to this request. As noted in the preamble discussion of section 850.20(c), 10 of the commenters either suggested or supported establishing an additional specification that hazard assessments be performed under the supervision of a CIH. DOE generally agrees with these commenters about the need for a qualified individual to manage hazard assessments and certain other tasks required by the rule. But DOE will not require that person to be in all cases a CIH. Thus, DOE provides in section 850.21(b)(1) that a qualified individual, such as a CIH, must manage hazard assessments performed for the CBDPP. By use of this language, DOE leaves open the possibility that a responsible employer, in a particular case, may determine that someone who is not a CIH possesses the requisite qualifications to manage the hazard assessments.

In addition to the comments on the CIH issue, DOE received only minor comments on section 850.21. One commenter (Ex. 21) suggested that the exposure potential of planned activities should be rank ordered to better focus each site's resources and efforts. DOE

agrees with this commenter, and in the final rule has modified the requirement for hazard assessments to require the prioritization of beryllium activities, beginning with those activities that present the greatest risks of exposure. Another commenter (Ex. 30) was concerned about the use of existing data, such as exposure monitoring results, in the hazard assessment. While this commenter believed that using existing data is appropriate, the commenter warned against the potential for errors when relating existing data to current operations. In particular, this commenter suggested that existing data relating to exposure monitoring is often not well documented or is of poor quality, thus making it difficult to determine whether the sampling is representative of current beryllium operations. DOE agrees that existing data can be a valuable tool if collected and documented properly, and in many cases use of such data will expedite the hazard assessment process. At the same time, DOE also shares this commenter's concerns regarding the accuracy and applicability of existing data and has retained in section 850.21(b) the requirement for the hazard assessment to be managed by a qualified individual, such as a CIH. DOE's intent is that this requirement will help ensure that the data considered in the hazard assessment accurately reflects current site conditions and hazards.

Another commenter (Ex. 24) favored the triggering of a hazard assessment at detectable airborne beryllium levels from personal air samples. DOE agrees that if such data is available, it must be considered in the hazard assessment. As another commenter (Ex. 28) pointed out, however, a hazard assessment should not be limited to the inhalation risks posed by beryllium but must also include the presence and characteristics of beryllium contamination in a facility. Accordingly, the final rule requires the responsible employer to perform a hazard assessment whenever the baseline inventory establishes the presence of beryllium in an area.

Still another commenter (Ex. 11) requested that DOE include a non-mandatory appendix to the rule to provide guidance on how to perform a hazard assessment. This commenter was concerned that inexperienced industrial hygienists may be called upon to perform a hazard assessment, and suggested that additional guidance would be needed to assure accuracy and consistency. DOE believes this concern is addressed in section 850.21(b), which requires that hazard assessments be managed by qualified individuals, such as CIHs, and performed by individuals

with sufficient knowledge and experience to perform such tasks. Accordingly, DOE has not included the requested appendix to provide guidance on how to perform a hazard assessment as a part of this rulemaking.

#### Section 850.22—Permissible Exposure Limit

In the NOPR preamble, DOE reviewed the scientific evidence suggesting that the current OSHA 8-hour TWA PEL does not sufficiently protect worker health. However, DOE also stated that, in its view, it is difficult to determine from this scientific evidence the exposure level necessary to eliminate the risk of contracting CBD. For this reason, DOE retained the existing OSHA 8-hr TWA PEL in proposed section 850.22, and proposed other provisions to minimize worker exposure to airborne beryllium in DOE facilities. In addition, DOE included in proposed section 850.22 language providing that DOE would adopt a more stringent 8-hour TWA PEL if OSHA promulgated one through the rulemaking process. Finally, DOE requested in the NOPR that interested persons submit any compelling scientific evidence that would assist DOE in establishing a new, more protective exposure limit for DOE facilities.

Fifteen persons commented on the 8-hour TWA permissible exposure limit requirements in the proposed rule. Of these 15 commenters, four supported DOE's proposal to retain the OSHA 8-hour TWA PEL (Exs. 4, 19, 26, 29). One of these four (Ex. 29) took issue with DOE's conclusion that the existing OSHA PEL was not protective. This commenter pointed to the inaccuracies associated with the use of area monitoring data in referenced studies and the fact that most of the referenced studies acknowledged that infrequent exposures above the PEL had occurred within the study group. As a result, this commenter felt that the OSHA PEL should be retained as the exposure limit in DOE work places.

Two commenters cited DOE's policy established in DOE Order 440.1 to adopt the more protective of either OSHA's PEL or ACGIH's threshold limit value (TLV) and recommended that DOE adopt the ACGIH's proposed 8-hour TWA TLV of  $0.2 \mu\text{g}/\text{m}^3$  as the new DOE exposure limit (Exs. 28, 30). One commenter (Ex. 28) also supported adopting the proposed ACGIH TLV as an 8-hour TWA action level, which DOE has done in the final rule. (See section 850.23 in this Section-by-Section Discussion for further discussion of the action level.) Another commenter opposed adopting the proposed ACGIH

limit and took issue with the policy in DOE Order 440.1A, stating that any new DOE limit should be subject to the rulemaking process (Ex. 16).

Five other persons suggested that DOE adopt one of a variety of lower exposure limits ranging from the limit of detection to the NIOSH Recommended Exposure Limit (REL), which is a ceiling limit of  $0.5 \mu\text{g}/\text{m}^3$ . These commenters cited the occurrence of CBD among workers exposed to beryllium at levels below the 8-hour TWA PEL, and some of these commenters argued that studies presented in the Health Effects discussion of the NOPR provided a sufficient basis for the establishment of a new exposure limit. For example, one commenter (Ex. 35) cited two studies that evaluated the occurrence of CBD among the general population around a beryllium plant in Lorain, Ohio (refs. 5 and 6). Relying on these studies, this commenter suggested that the U.S. Environmental Protection Agency's ambient air criterion for beryllium of  $0.01 \mu\text{g}/\text{m}^3$  could be used as a basis for a new 8-hour TWA exposure limit. Two other commenters (Exs. 14, 24) cited the two Lorain, Ohio community studies, the occurrence of CBD among workers with beryllium exposures "well below the PEL," a study published in 1997 (ref. 31) which suggests that beryllium sensitization occurs at airborne beryllium exposure levels as low as  $0.01 \mu\text{g}/\text{m}^3$ , and the DOE policy to provide a workplace free of recognized hazards (DOE Order 440.1A) to support their position that workers should not be exposed to any detectable level of beryllium. The remaining two commenters that offered suggestions for an alternative exposure limit agreed with DOE's conclusion that the OSHA 8-hour TWA PEL was not sufficiently protective and recommended adopting limits established by other occupational health groups. One commenter (Ex. 18) suggested that DOE adopt NIOSH's REL as a DOE exposure limit while the other (Ex. 22) suggested that DOE apply a safety factor of 4 to the ACGIH 8-hour TLV and use  $0.05 \mu\text{g}/\text{m}^3$  as the new DOE limit.

Two other commenters (Ex. 20, 32) agreed with DOE's conclusion that the OSHA 8-hour TWA PEL is not sufficiently protective and recommended that DOE establish a new exposure limit. These commenters, however, did not offer suggestions for alternative new exposure limits. Another commenter did not directly address DOE's proposal to retain the OSHA PEL, but instead recommended that DOE should consider the possible effects of particle size on the occurrence of CBD.

DOE has carefully considered each of these comments and available scientific data, and continues to believe that its original conclusion, as outlined in the proposed rule, remains valid.

Specifically, DOE believes that existing scientific data indicates that there are reasonable grounds to conclude that the OSHA 8-hour TWA PEL for beryllium may not be sufficiently protective of worker health, a conclusion supported by 12 of the 15 commenters that addressed this section of the proposed rule. DOE is particularly influenced by the published studies (refs. 16–17, 21) indicating that workers exposed below the current PEL are contracting beryllium disease and exhibiting Be-LPT sensitivity. A recent article by Eisenbud (ref. 29) also concludes that it "appears" the current PEL is not protective enough.

However, DOE also believes, based on available scientific data, that it is difficult to determine the exposure level necessary to eliminate the risk of contracting CBD and, therefore, that the best approach to providing improved worker protection is through the establishment of a conservative 8-hour TWA action level, coupled with aggressive exposure reduction and minimization efforts, and the collection of medical surveillance data to better understand the cause of CBD.

Accordingly, DOE has retained the OSHA 8-hour TWA PEL in section 850.22 of the final rule and has retained the action level concept of the proposed rule, although at a lower level (see section 850.23 discussion). Section 850.22 has been revised to simply reference 29 CFR 1910.1000, instead of specifying the current numerical limit. DOE intends this provision to result in the automatic incorporation of a more stringent PEL that OSHA may subsequently promulgate. This does not represent a substantive change to the provision as proposed.

In this rule, however, DOE has decided not to follow the policy under the more general worker protection program established by DOE Order 440.1A of adopting the more protective of either the OSHA PEL or the ACGIH TLV. The incorporation of any new ACGIH TLV in this rule would require that DOE conduct a rulemaking on the specific exposure level and present the scientific basis for public comment. As stated previously in this **SUPPLEMENTARY INFORMATION** section, DOE believes, based on the existing scientific evidence, that such a rulemaking is premature. By contrast, DOE may incorporate an OSHA PEL in this rule because the OSHA PEL is promulgated following notice and comment

rulemaking, and the rules of the Office of the Federal Register permit a reference to another part of the Code of Federal Regulations.

DOE proposed, in section 850.22(a) of the NOPR, to adopt the STEL established by the ACGIH of  $10 \mu\text{g}/\text{m}^3$ , averaged over a 15-minute sampling period. In the final rule the STEL has been deleted, because the proposed STEL would not provide any added protection for the worker given that the new action level of  $0.2 \mu\text{g}/\text{m}^3$  would be exceeded in less than 15 minutes where exposure levels are at  $10 \mu\text{g}/\text{m}^3$ . DOE did not seek to establish a lower STEL because, as in the case of a lower PEL, available scientific data do not provide a sufficient basis for the establishment of a new STEL.

#### Section 850.23—Action Level

DOE proposed in the NOPR to establish an 8-hour TWA action level of  $0.5 \mu\text{g}/\text{m}^3$ . In selecting the proposed action level, DOE considered a number of factors. DOE considered OSHA's substance-specific health standards, which typically establish action levels for hazardous and toxic substances at one-half the 8-hour TWA PEL. Applying this approach to beryllium would have resulted in a proposed 8-hour TWA action level of  $1.0 \mu\text{g}/\text{m}^3$ . OSHA's action levels are premised on the safety of its PELs, and are set to provide an additional margin of safety. As explained in the preceding discussion, however, there is a body of evidence suggesting that the OSHA PEL for beryllium does not adequately protect worker health. Therefore, DOE decided that a lower action level is appropriate for DOE facilities. According to the results of the 1996 DOE survey of DOE facilities which reported potential beryllium exposures, two DOE facilities (Pantex and Rocky Flats) had already employed an action level of  $0.5 \mu\text{g}/\text{m}^3$ . Another facility (Lawrence Livermore National Laboratory) reported the use of an "administrative warning range" of  $0.2$  to  $2.0 \mu\text{g}/\text{m}^3$ , which triggered a requirement for an investigation, and six DOE facilities employed an action level of  $1.0 \mu\text{g}/\text{m}^3$ . In light of this experience, DOE proposed adopting an action level at the lower end of existing DOE complex action levels ( $0.5 \mu\text{g}/\text{m}^3$ ), rather than follow the typical OSHA practice, in order to implement aggressive yet achievable exposure minimization.

The majority of comments received on the proposed rule agreed with the DOE's approach of using an action level that is lower than the typical OSHA action level, but called for an even lower level than DOE had proposed. The most commonly recommended level was  $0.2$

$\mu\text{g}/\text{m}^3$ , which is the same level as the ACGIH proposed TLV. Most commenters believed that this level would prevent additional cases of beryllium sensitization and disease. DOE believes that there is reasonable technical basis for selecting  $0.2 \mu\text{g}/\text{m}^3$  as an action level, based on the following scientific analyses.

The U.S. Environmental Protection Agency's (EPA) Integrated Risk Information System includes a Reference Concentration of  $0.02 \mu\text{g}/\text{m}^3$  for beryllium, which is "an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of noncancer effects during a lifetime" (ref. 33). This concentration is based on epidemiology studies. This continuous 24-hour per day, level translates into an 8-hour TWA level of  $0.84 \mu\text{g}/\text{m}^3$ .

Merrill Eisenbud conducted a study of CBD based on air sampling, atmospheric dispersion modeling, and analysis of a beryllium production plant's past operations. Eisenbud concluded that the lowest beryllium concentration at the 3/4-mile boundary, beyond which no community cases of chronic beryllium disease were found, was  $0.025 \mu\text{g}/\text{m}^3$  during the 7-year period the plant operated at full capacity (ref. 29). This 24-hour per day level translates into an 8-hour TWA level of  $0.84 \mu\text{g}/\text{m}^3$ , which essentially is the same level that the EPA found to be without appreciable risk of causing noncancer effects (i.e., CBD).

The ACGIH, a professional organization that publishes occupational health consensus standards, has proposed to change its 8-hour TWA TLV from  $2 \mu\text{g}/\text{m}^3$  to  $0.2 \mu\text{g}/\text{m}^3$ , based on its review of recent beryllium epidemiology studies (ref. 32).

The DOE recognizes that the EPA ( $0.84 \mu\text{g}/\text{m}^3$ ), Eisenbud ( $0.84 \mu\text{g}/\text{m}^3$ ), and ACGIH ( $0.2 \mu\text{g}/\text{m}^3$ ) levels are normally used as exposure limits rather than action levels. However, based on limitations of the studies done to date, the difficulties in determining a safe threshold level for occupational exposure to beryllium, and DOE's decision to implement aggressive exposure reduction and minimization efforts, DOE has decided that the most prudent course is to lower the action level to  $0.2 \mu\text{g}/\text{m}^3$  rather than set a new exposure limit. The available science suggests that this level would be protective; is one-quarter of the EPA and Eisenbud levels and the same as the ACGIH proposed level. This is the

lowest action or trigger level reported by any DOE facility under the interim CBDPP, and a lower level has not been demonstrated as being practicable. Lowering the action level to  $0.2 \mu\text{g}/\text{m}^3$  will result in greater protection for the affected DOE work force by triggering additional monitoring, surveillance, respiratory protection, and other protective measures.

*Benefits of lowering the action level.* As specified in this rule, the action level triggers the use of a number of controls and protective measures designed to protect employees from exposures to beryllium, including:

- Periodic exposure monitoring (10 CFR 850.24 (c));
- Exposure reduction and minimization measure (10 CFR 850.25);<sup>4</sup>
- Regulated areas (10 CFR 850.26);
- Hygiene facilities and practices (10 CFR 850.27);
- Respiratory protection (10 CFR 850.28); and
- Protective clothing and equipment (10 CFR 850.29).

Thus, DOE sites where exposure levels exceed the action level would be required to implement these controls to provide further protection to workers exposed above the action level. This additional protection will reduce the exposure levels experienced by these workers, consequently reducing their risk of developing beryllium-related disease and other health effects. Setting the action level at  $0.2 \mu\text{g}/\text{m}^3$ , as opposed to  $0.5 \mu\text{g}/\text{m}^3$ , does not alter the set of controls that are triggered,<sup>5</sup> but does alter the timing of these additional controls. The additional protective measures triggered by the action level will be put into effect earlier. For example, consider an activity where airborne concentrations of beryllium start very low (below  $0.2 \mu\text{g}/\text{m}^3$ ), but rise over time (e.g., over a course of days or weeks) in the workplace. Assume also that airborne concentrations will eventually exceed  $0.5 \mu\text{g}/\text{m}^3$ . If the responsible employer recognizes the potential for exposures to exceed the action level in this activity, this rule (as well as prudent industrial hygiene practice) would require the responsible employer to conduct exposure

<sup>4</sup> The rule does not require that exposure reduction and minimization efforts (e.g., engineering controls and work practices) be triggered by the action level. DOE expects, however, that affected sites will specify that some engineering controls and work practices be triggered by the action level in their CBDPP plans.

<sup>5</sup> DOE did alter the set of controls that are triggered by the action level between the proposed and the final rule. This, however, was not done as a result of setting a lower action level, but was in response to comments on the proposed rule.

monitoring to determine if and when the action level is exceeded. In this situation, once the 0.2  $\mu\text{g}/\text{m}^3$  threshold is crossed, the responsible employer would be required to implement the controls specified above, and workers would benefit from the additional protection provided by those controls. Under an action level of 0.5  $\mu\text{g}/\text{m}^3$ , protective measures would not be implemented until the airborne concentrations exceeded 0.5  $\mu\text{g}/\text{m}^3$ . Thus, during the time that exposures are between 0.2  $\mu\text{g}/\text{m}^3$  and 0.5  $\mu\text{g}/\text{m}^3$ , workers would not be afforded the additional protection of the triggered controls. Thus, the first incremental benefit of setting the action level lower is the reduction in risk afforded by the controls triggered during the time that exposures are between 0.2  $\mu\text{g}/\text{m}^3$  and 0.5  $\mu\text{g}/\text{m}^3$  (See Table 9).

The second benefit from setting the action level lower is to expand the number of workers afforded the additional controls (See Table 10). DOE believes there are a number of workers exposed to airborne concentrations of beryllium between 0.2  $\mu\text{g}/\text{m}^3$  and 0.5

$\mu\text{g}/\text{m}^3$ , but who are never exposed above 0.5  $\mu\text{g}/\text{m}^3$ . DOE estimates that between 342 and 460 workers may be exposed at these levels.<sup>6</sup> Under an action level of 0.5  $\mu\text{g}/\text{m}^3$ , these workers would not be afforded the protection of controls triggered by the action level. Under an action level of 0.2  $\mu\text{g}/\text{m}^3$ , however, these workers are afforded the additional controls. These additional controls will reduce the exposures faced by these workers, leading to a reduction in their risk of developing beryllium-related disease and other health effects. Thus, the second benefit of using the lower action level is a reduction in risk among workers exposed to airborne concentrations between 0.2  $\mu\text{g}/\text{m}^3$  and 0.5  $\mu\text{g}/\text{m}^3$ .

Quantitative estimates of the reduction in risk and the consequent reduction in the incidence of beryllium-related disease and other health effects are not possible due to a lack of necessary information. As discussed in this preamble and the Economic Analysis (Chapter 1, Section 1.1), no quantitative dose-response relationship has been defined for beryllium. Without

this information, DOE is unable to provide a quantitative estimate of the benefit of using a lower action level. Nevertheless, DOE believes that the use of 0.2  $\mu\text{g}/\text{m}^3$  action level as opposed to the 0.5  $\mu\text{g}/\text{m}^3$  is justified based on the benefits discussed above and the number of comments that suggested that an action level lower than 0.5  $\mu\text{g}/\text{m}^3$  is necessary.

*Other issues.* This revision to the final rule does not accommodate the comments (Exs. 12, 18, 32) that urged DOE to lower its action level to any detectable level of beryllium. DOE believes it would not be practicable to use any detectable level of beryllium as its action level because beryllium is ubiquitous; it can be detected virtually anywhere if a sufficiently large air sample is taken. Furthermore, according to the EPA's Integrated Risk Information System, discussed above, the United States population is being exposed to detectable background levels of beryllium without an appreciable risk of contracting CBD in their lifetime. Therefore, that level is not supported by the available science.

TABLE 9.—COMPARATIVE COST ANALYSIS FOR DIFFERENT ACTION LEVELS

Category/requirement	Annualized cost for 0.2 µg/m³ action level (final rule)	0.5 µg/m³ action level		0.1 µg/m³ Action level	
		Annualized cost	Difference from 0.2 µg/m³ action level	Annualized cost	Difference from 0.2 µg/m³ action level
Requirements Triggered By The Action Level in the Final Rule:					
Periodic exposure monitoring .....	\$1,962,620	\$1,104,421	(\$858,199)	\$3,574,937	\$1,612,317
Notify workers monitoring results .....	66,932	40,411	(26,521)	82,104	15,171
Exposure reduction and minimization .....	2,707,636	<sup>2</sup> 2,707,636	0	3,579,513	871,877
Regulated areas .....	0	0	0	8,496	8,496
Change rooms and showers .....	249,730	249,730	0	272,337	22,607
Respiratory protection .....	9,085	9,085	0	342,495	333,410
Protective clothing .....	0	0	0	382,528	382,528
Disposal of protective clothing .....	0	0	0	42,738	42,738
Subtotal .....	4,996,004	4,111,284	(884,720)	8,285,149	3,289,144
Other Requirements .....	26,555,397	26,555,397	0	26,555,397	0
Total for all requirements <sup>1</sup> .....	31,551,401	30,666,680	(884,720)	34,840,545	3,289,144

Note: Column totals may contain some rounding error.

<sup>1</sup> For this row, the annualized cost represents the annualized cost of the proposed rule for the specified action level.

<sup>2</sup> The costs for exposure reduction and minimization may be lower with a 0.5  $\mu\text{g}/\text{m}^3$  action level since fewer requirements would be triggered under the higher action level. The information provided to DOE by the sites, however, did not contain enough information to make an estimate of the reduction in the costs for this category.

<sup>6</sup> The lower bound estimate (342) is the difference between the number of workers exposed above the 0.5  $\mu\text{g}/\text{m}^3$  action level estimated in the Economic Analysis (EA) for the proposed rule (894 workers) and the number of workers exposed above the 0.2  $\mu\text{g}/\text{m}^3$  action level estimated in the EA for the final rule (1,236 workers). The estimates contained in the two versions of the EA are not, however, completely

comparable. In developing the EA for the final rule, DOE obtained new data from the sites on the number of workers exposed above 0.2  $\mu\text{g}/\text{m}^3$ . For some sites, the reported number of workers exposed above 0.2  $\mu\text{g}/\text{m}^3$  was less than DOE's previous estimate of the number exposed above 0.5  $\mu\text{g}/\text{m}^3$ . To correct for this inconsistency, DOE used the minimum of the two estimates for each site as an

estimate of the number exposed above 0.5  $\mu\text{g}/\text{m}^3$ . This resulted in an estimated 776 workers exposed above 0.5  $\mu\text{g}/\text{m}^3$ . The difference between this new estimate and the estimated number exposed above 0.2  $\mu\text{g}/\text{m}^3$  (1,236 workers) provides the upper bound estimate (460 workers).



TABLE 10.—ESTIMATED NUMBER OF WORKERS BY EXPOSURE LEVEL

Beryllium exposure levels ( $\mu\text{g}/\text{m}^3$ )	Estimated number of workers <sup>1</sup>	Percent of all affected workers
0.0 to 0.1 .....	0	0
0.1 to 0.2 .....	398	24.4
0.2 to 0.5 .....	342 to 460	20.9 to 28.2
Above 0.5 .....	776 to 894	47.5 to 54.7
Total .....	1,634	100
Total Above 0.1 .....	1,634	100
Total Above 0.2 .....	1,236	75.6

<sup>1</sup> The Economic Analysis (EA) for the final rule estimates that 1,236 workers are exposed above the action limit of  $0.2 \mu\text{g}/\text{m}^3$  and that a total of 1,634 workers are currently exposed to beryllium. Thus, 398 workers must be exposed below  $0.2 \mu\text{g}/\text{m}^3$  ( $398 = 1,634 - 1,236$ ). Given that measurements of exposure levels below  $0.1 \mu\text{g}/\text{m}^3$  begin to near the detection limits, DOE assumes that all workers exposed below  $0.2 \mu\text{g}/\text{m}^3$  would be in the 0.1 to 0.2 group. Next, DOE estimated the upper bound of the above 0.5 group by taking the estimated number of workers exposed above  $0.5 \mu\text{g}/\text{m}^3$  from the EA for the proposed rule (i.e., 894 workers). The difference between this number and 1,236 (the number exposed above  $0.2 \mu\text{g}/\text{m}^3$ ) provided the lower bound of the 0.2 to 0.5 group ( $342 = 1,236 - 894$ ). To provide the lower bound of the above 0.5 group (776 workers), DOE corrected for an inconsistency between the EA for the proposed rule and the EA for the final rule. In developing the EA for the final rule, DOE obtained new data from the sites on the number of workers exposed above  $0.2 \mu\text{g}/\text{m}^3$ . For some sites, the reported number of workers exposed above  $0.2 \mu\text{g}/\text{m}^3$  was less than DOE's previous estimate of the number exposed above  $0.5 \mu\text{g}/\text{m}^3$  (in the EA for the proposed rule). To correct for this inconsistency, DOE used the minimum of the two estimates (i.e., the estimated number of workers exposed above  $0.2 \mu\text{g}/\text{m}^3$  in the EA for the final rule and the estimated number of workers exposed above  $0.5 \mu\text{g}/\text{m}^3$  in the EA for the proposed rule) for each site as an estimate of the number exposed above  $0.5 \mu\text{g}/\text{m}^3$ . This resulted in an estimated 776 workers exposed above  $0.5 \mu\text{g}/\text{m}^3$  which DOE uses as the lower bound for that group. The difference between this number and the estimated number exposed above  $0.2 \mu\text{g}/\text{m}^3$  (1,236 workers) provides the upper bound estimate for the 0.2 to 0.5 group ( $460 = 1,236 - 776$ ).

NOTE: Column total may contain some rounding error.

#### Section 850.24—Exposure Monitoring

Section 850.24 establishes CBDPP worker exposure monitoring requirements. The exposure monitoring provisions in this section are necessary to determine the extent of exposure at the worksite; prevent worker overexposure; identify the sources of exposure to beryllium; collect exposure data so that the responsible employer can select the proper control methods to be used; evaluate the effectiveness of selected controls; and provide continual feedback on the effectiveness of the program in controlling exposures. These requirements are more specific than the provisions of exposure monitoring in DOE Order 440.1A.

Exposure monitoring is important not only to determine the level of beryllium to which workers are exposed and the frequency at which workers should be monitored, but also to determine whether other protective provisions of the rule need to be implemented. The employer's obligation to provide respiratory protection under section 850.28, for example, is triggered by monitoring results showing that a worker is exposed at or above the action level. Exposure monitoring results also may help DOE to resolve uncertainties regarding the adequacy of the existing beryllium PEL and to refine the requirements of this rule as needed to protect worker health.

Because of the importance of adequately characterizing and monitoring worker exposures to beryllium, DOE included a specific request in the NPR asking interested

persons for views or information on the need for daily exposure monitoring of all beryllium workers. DOE was considering whether daily exposure monitoring was needed to document and characterize more completely a worker's exposure to beryllium, and to better evaluate the adequacy of existing exposure levels or determine appropriate levels for alternative exposure limits. Of the ten commenters who responded to this request for information, three favored a daily monitoring requirement while seven were opposed.

The commenters who favored daily monitoring for all workers (Exs. 18, 25, 30) argued that daily monitoring of each worker would more accurately document and characterize beryllium exposures. One commenter (Ex. 16) suggested that initial daily monitoring could be replaced with periodic monitoring after sufficient data was obtained. Another (Ex. 30) noted that daily exposure monitoring might be the only accurate way to determine exposures during changing workplace conditions. This commenter suggested that daily monitoring is important in identifying specific work activities that contribute to the worker exposures.

The majority of commenters responding to this request (Exs. 3, 4, 16, 17, 26, 28, 29) objected to daily monitoring of all workers to determine beryllium exposures. These commenters stated that daily monitoring would generate large amounts of data, at great cost, while producing little or no added benefit. Some of these commenters (Exs.

3, 26, 28, 29) favored representative sampling of the workplace, using statistical analysis to determine the number of samples required. These commenters asserted that the principal benefits of a statistically-based monitoring strategy would be the reduction in the number of samples needed and resources used.

After considering all of the comments, DOE agrees that daily monitoring would be unnecessarily burdensome for responsible employers, and that a statistically-based approach will ensure the adequate characterization of worker exposures. This position is reflected in section 850.24(b), as discussed below.

Section 850.24(a) requires that exposure monitoring be managed by a qualified individual such as a CIH, and conducted by individuals with sufficient industrial hygiene knowledge and experience. DOE requested in the NPR that interested persons submit comments on the need to further specify the minimum qualifications that an individual must possess to perform certain key functions under the CBDPP, including exposure monitoring. Most of the commenters suggested or supported adding a requirement that exposure monitoring be performed under the supervision of a CIH. DOE agrees that a CIH is often best qualified to manage exposure monitoring activities, and provides in section 850.24(a)(1) that exposure monitoring performed for the CBDPP be managed by a qualified individual, such as a CIH. However, in keeping with the performance-based philosophy underlying this rule, DOE



does not preclude a responsible employer from determining, in a particular situation, that a person other than a CIH possesses the requisite knowledge to perform this function. Most of the commenters were of the view that individuals conducting the monitoring, under the management of a qualified individual, need sufficient knowledge and experience but not necessarily the same level of qualification as a CIH.

Section 850.24(b) requires the responsible employer to perform initial exposure monitoring for all persons who work in areas that may have airborne concentrations of beryllium, as determined through the baseline beryllium inventory and hazard assessment. The responsible employer must employ a statistically-based monitoring strategy to obtain the number of samples needed to characterize worker exposures. The initial exposure information is necessary to determine the need for engineering and work practice controls, to select appropriate personal protective clothing and respiratory protective equipment where needed, and to identify the need to establish regulated areas. One commenter (Ex. 28) recommended that sampling should be conducted to determine particle size and chemical characterization of the potential exposure, and another commenter (Ex. 30) recommended use of particle size-selective personal monitoring. DOE has decided to leave details of this nature to the qualified individual who manages exposure monitoring under the CBDPP, rather than attempt to prescribe them in regulations. This type of issue also may be addressed in future DOE guidance on implementing the CBDPP.

Section 850.24(b)(1) requires the responsible employer to determine the beryllium exposure of workers by collecting personal breathing zone samples that reflect worker's exposure to airborne concentrations of beryllium over an eight-hour period. As specified in the definition of "worker exposure" in section 850.3, this is a measurement of the exposure that would occur if the worker were not using respiratory protective equipment. Section 850.3 also includes a definition of "breathing zone," which means "a hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches." Thus, a breathing zone sample is taken as close as practical to the nose and mouth of the worker. For a full description of breathing zone samples, see OSHA's Instruction CPL 2-2.20B, CH-1, Nov. 13, 1990.

DOE recognizes that many of its responsible employers may have performed initial monitoring as part of their efforts to implement DOE Notice 440.1. DOE does not intend to require employers to repeat these efforts if they are adequate under the rule. Accordingly, section 850.24(b)(2) allows employers to use initial monitoring data collected within 12 months before the effective date of this rule to satisfy the rule's initial monitoring requirements. One commenter (Ex. 31) cautioned DOE that any sampling performed prior to the issuance of the final beryllium rule should only be accepted by DOE if the work conditions during the sampling period are the same as current conditions. DOE agrees with this commenter, and notes that several provisions of the final rule require responsible employers to ensure that sampling results reflect current workplace conditions. Specifically, section 850.24(b) requires that the responsible employer obtain a sufficient number of sample results to adequately characterize exposures, and section 850.24(d) requires that the responsible employer perform additional monitoring if operations, maintenance, or procedures change, or if the responsible employer has any reason to suspect a change has occurred which may result in new or additional exposures. Further, DOE believes that the requirement that exposure monitoring be managed by a qualified individual will help assure that exposure monitoring results accurately characterize worker exposures.

Section 850.24(c) requires the responsible employer to conduct periodic exposure monitoring of workers who work in areas where airborne concentrations of beryllium are at or above the action level. Periodic monitoring provides the responsible employer with assurance that workers are not experiencing higher exposures that may require the use of additional controls. In addition, periodic monitoring reminds workers and responsible employers of the continued need to protect against the hazards associated with exposure to beryllium. The collection of exposure monitoring data also enables the SOMD to be informed of the existence and extent of potential sources of beryllium exposure.

Some commenters argued that the periodic monitoring requirements in the rule should be more conservative than proposed in the NOPR. For instance, one commenter (Ex. 13) recommended that the requirement for periodic monitoring be implemented if employee exposures exceed 10% of the PEL while another commenter (Ex. 18) suggested

that periodic monitoring be required for all workers regardless of previously measured exposures. DOE has addressed the first commenter's concerns by establishing the action level in the final rule at no greater than 0.2  $\mu\text{g}/\text{m}^3$  (ten percent of the PEL). DOE does not believe that periodic monitoring should be mandated for all workers regardless of exposure level, as suggested by the other commenter, but rather that the responsible employer should determine the frequency of periodic monitoring where levels are below the action level. However, DOE does encourage sites to establish lower action levels to trigger components of their CBDPP, as part of their exposure reduction and minimization efforts required under section 850.25.

A third commenter (Ex. 14), addressing the periodic monitoring requirements of proposed section 850.24(c), stated that periodic monitoring on a continuous basis is the only way to determine worker exposures. While DOE acknowledges that certain operations may warrant continuous monitoring due to the dynamic nature of day-to-day operations, DOE believes that an inflexible, one-size-fits all monitoring policy is inappropriate due to the wide range of beryllium-related operations within the DOE complex. Accordingly, DOE provides responsible employers the flexibility to determine the monitoring frequency that is needed to sufficiently characterize worker exposures. DOE believes that responsible employers are best positioned to evaluate the potential variability of worker exposures in their operations and to tailor their periodic monitoring approaches as appropriate. Nevertheless, because slight process or procedural changes may go unnoticed over time and because equipment maintenance, aging, or deterioration can affect performance, DOE, in section 850.24(c), is requiring a minimum exposure monitoring frequency of every 3 months (quarterly) for workers who are exposed to airborne concentrations of beryllium at or above the action level.

DOE recognizes that the minimum quarterly monitoring of workers exposed at or above the action level is more frequent than is required in most OSHA expanded health standards. However, DOE considers this minimum monitoring frequency to be necessary due to the uncertainties regarding the adequacy of the current PEL. To supplement this periodic monitoring requirement, section 850.24(d) requires that responsible employers perform additional exposure monitoring when beryllium-related operations or

procedures change, or they have any reason to suspect a change, which may cause new or additional exposures to workers. This additional monitoring is needed to protect workers from elevated exposures resulting from changed circumstances, to quantify how changes affect worker exposure to airborne beryllium, to ensure the continued effectiveness of existing engineering and work-practice controls, and to identify the need for additional control measures to minimize worker exposure to beryllium.

To obtain accurate exposure monitoring results, section 850.24(e) requires that responsible employers use monitoring and analytical methods that have accuracy, at a confidence level of 95 percent, of not less than plus or minus 25 percent for airborne concentrations of beryllium at the action level. The main reason DOE is requiring this degree of accuracy for exposure monitoring results is to ensure that exposure monitoring results are sufficiently accurate at the exposure level that is relevant for the CBDPP. Accuracy of measurements is critical, since certain central requirements of the rule (e.g., engineering controls, exposure reduction and minimization, respirator use, and regulated areas) are triggered by measured worker exposures that meet or exceed the action level. In addition, the medical removal provision requires that a removed worker not be placed in a job where exposure levels are at or above the action level.

Section 850.24(f) further ensures the quality of monitoring results by requiring that all laboratory analyses of air sampling data be performed in a laboratory accredited for metals by the AIHA, or a laboratory that demonstrates quality assurance for metals that is equivalent to AIHA accreditation. Equivalency to AIHA's accreditation means that a laboratory can demonstrate that their testing protocols meet the accreditation standards of AIHA. These accuracy and quality requirements are consistent with similar requirements that appear in many of OSHA's expanded health standards for toxic substances. The only commenter (Ex. 13) to address this issue agreed with DOE that the use of an AIHA accredited laboratory will ensure the quality control, consistency, and accuracy of beryllium sample analyses. DOE has added to the final rule the language "or a laboratory that demonstrates quality assurance for metals analysis that is equivalent to AIHA accreditation," to provide responsible employers more flexibility in selecting a laboratory and to allow the use of an appropriate

laboratory currently being used by the employer.

Section 850.24(g)(1) requires responsible employers to notify affected workers of monitoring results, in writing, within 10 working days of receipt of the monitoring results. This section also provides responsible employers with two alternative methods of worker notification: (1) written notification to each affected worker, or (2) posting of monitoring results in a location or locations readily accessible to affected workers. Two commenters (Exs. 16, 23) expressed concern about the use of personal identifiers in posted monitoring results, citing worker privacy concerns.

One commenter (Ex. 26) objected strongly to DOE's proposal to provide notice to workers in a manner that does not identify the worker. This commenter argued that not only is there no right to privacy implicated by posting of sampling results, but that anonymous notification would not further personal accountability for work practices. This commenter cited the Atomic Weapons Establishment's (AWE) experience at its Cardiff (United Kingdom) facility to show the beneficial effects of peer pressure on individual workers' adherence to good work practice. DOE recognizes AWE's experience and the benefits of peer pressure on workers' adherence to good work practices. However, DOE is following the approach used in OSHA's substance-specific standards that have posting requirements, which does not incorporate the principle of applying peer pressure to establish good work practice procedures. DOE, therefore, provides in the final rule that when the posting option is selected, responsible employers must post the results without disclosing the identity of the affected workers. This protection of workers' privacy is consistent with OSHA's substance-specific standards that have posting requirements.

Sections 850.24(g)(2) and (3) deal with cases in which monitoring results indicate that the worker exposure level meets or exceeds the action level. In such cases, the responsible employer is required by paragraph (g)(2) to include in the notice to workers a description of the corrective actions being taken to reduce worker exposure to below the action level. Paragraph (g)(3) requires the responsible employer to notify the SOMD of the results within 10 working days of receipt of the monitoring results. DOE believes that the SOMD must be informed of such exposures in order to refine, as appropriate, the medical surveillance protocol for affected workers to ensure effective monitoring

and early detection of beryllium-related health effects.

#### Section 850.25—Exposure Reduction and Minimization

Section 850.25 establishes the exposure reduction and minimization provisions of the CBDPP that reflect DOE's goal of achieving aggressive reduction and minimization of worker exposures to airborne beryllium.

Section 850.25(a) establishes the baseline requirement that responsible employers ensure that no worker is exposed to airborne beryllium at levels above the exposure limit established in section 850.22.

Section 850.25(b)(1) requires the responsible employer to include in the CBDPP a formal exposure reduction and minimization program to reduce exposure levels that are at or above the action level to below the action level, if practicable. Sections 850.25 (b)(1)(i)-(iv) provide that the formal exposure reduction and minimization program must include: (1) exposure reduction and minimization goals, (2) the rationale to support the goals and a strategy for achieving them, (3) the specific actions that the responsible employer plans to take to achieve the goals, and (4) a means of tracking progress towards meeting the goals or demonstrating that the goals have been met. Where levels are below the action level, section 850.25(b)(2) requires responsible employers to include in their CBDPP a description and rationale for the steps they plan to take to reduce and minimize exposures, if such steps are practicable. Such steps are applicable when exposures are measured below the action level to provide additional worker protection. This requirement assures responsible employer's commitment to address and further reduce exposures, as practicable, below the action level and implementing the steps included in their CBDPP.

Section 850.25(c) provides that responsible employers must apply the hierarchy of industrial hygiene controls, as already required under DOE Order 440.1A, to achieve exposure control. This hierarchy dictates that responsible employers first must implement feasible engineering controls, followed by administrative controls, in their efforts to reduce and minimize exposures. Responsible employers can supplement these controls with personal protective clothing and equipment to reduce exposures where engineering and administrative controls are not feasible.

In summary, section 850.25 establishes a graded approach to reducing and minimizing beryllium exposures to levels as low as

practicable. This approach is familiar to the DOE community because it is similar to DOE's "as low as reasonably achievable" approach to radiation protection. DOE's requirement that the responsible employer establish a formal program of setting and tracking reduction goals for exposures above the action level will result in greater management attention to potential high exposures. The requirement that the responsible employer take steps to reduce and minimize exposures that are below the action level commits DOE to continue reducing and minimizing exposures, but without the same level of management attention since these exposures are believed to represent a lower risk to workers.

Six persons commented on the exposure reduction and minimization requirements of the proposed rule. Two of the commenters (Exs. 18, 23) recommended that the rule require responsible employers to initiate reduction and minimization actions to maintain exposures below the action level, rather than below the exposure limit. DOE would essentially be setting a new DOE exposure limit if it followed this recommendation. As previously explained, DOE believes that setting a new exposure limit would be inappropriate because the scientific data is not fully developed and does not yet provide an adequate basis for determining an appropriate new limit. The discussion of section 850.22, Permissible Exposure Limit, provides greater detail on the issue of lowering the exposure limit.

Three of the commenters (Exs. 4, 18, 33) made recommendations that relate to the appropriate trigger for requiring responsible employers to initiate reduction and minimization actions where exposure levels are below the action level. Two commenters (Exs. 18, 33) recommended that the rule require responsible employers to initiate reduction and minimization actions wherever beryllium is detected. One commenter (Ex. 4) interpreted Table 5 in the NOPR preamble to mean that DOE would expect the responsible employer to undertake actions anywhere exposure levels are greater than zero. DOE believes that using either the limit of detection or greater than zero as the trigger is not practicable because trace levels of beryllium are ubiquitous, and beryllium levels in air can be measured everywhere if a large enough air sample is taken to accumulate sufficient beryllium to exceed the lower detection limit of the analytic method being used. DOE believes that final section 850.25(b)(2) best meets DOE's intention of establishing an effective performance-

based rule by requiring responsible employer actions, if practicable, where exposure levels are below the action level.

Another commenter (Ex. 3) questioned the efficacy of enforcing a rule that allows each site to establish individual exposure reduction and minimization goals. DOE believes that this approach is adequately enforceable based on its positive experience using contractual mechanisms to enforce similar requirements in radiation protection regulations.

#### Section 850.26—Regulated Areas

Section 850.26 establishes the regulated area provisions of the CBDPP. Regulated areas are an effective means of minimizing the number of workers exposed to airborne concentrations of beryllium because they prevent or minimize the spread of beryllium to clean areas. This is consistent with good industrial hygiene practice whenever exposure to a toxic substance can cause serious health effects.

The final rule's requirements for regulated areas are essentially the same as those proposed, with certain good hygiene practices being added in response to a commenter's (Ex. 1) concern discussed below under section 850.26(d).

Section 850.26(a) requires the responsible employer to establish regulated areas where, based on breathing zone samples, the employer determines that workers are exposed to airborne concentrations of beryllium at or above the action level.

Three commenters addressed this provision, as proposed, and suggested either alternate or supplemental criteria to trigger the establishment of regulated areas. One commenter (Ex. 18) suggested that the trigger level be lowered to require that regulated areas be established wherever beryllium is detected. DOE believes that the final rule's significantly lower action level provides a suitable mandatory trigger for the establishment of regulated areas. In addition, DOE believes that the CBDPP exposure reduction and minimization provisions will result in the use of an even lower site-specific action level as improved controls become feasible throughout the DOE complex.

The two other commenters (Ex. 3, 34) suggested that the proposed provision for regulated areas be supplemented with a surface contamination level limit that would trigger the establishment of regulated areas. No reliable correlation has been established between surface contamination level and airborne concentrations of beryllium. DOE, therefore, believes that using a surface

contamination level limit as a trigger for the establishment of regulated areas would produce minimal benefits to worker health and has not adopted this recommendation.

One of the commenters (Ex. 3) suggested that if engineering or process controls bring exposure levels to below the action level in a regulated area, the area should remain a regulated area to ensure that controls remain in place. DOE does not agree with this comment. While the rule would not prevent responsible employers from implementing such a practice, requiring that regulated area provisions remain in effect after exposures have been reduced to acceptable levels would impose additional financial burdens on employers with no corresponding improvement in worker protection. In addition, DOE believes that such a mandatory provision could undermine the incentives this rule creates for employers to implement effective engineering or process controls. If employers were required to maintain regulated areas regardless of whether they had implemented effective engineering controls, employers might have less motivation to implement the controls. This commenter's concern is at least partly addressed by section 850.24(d), which requires the performance of additional exposure monitoring if operations or procedures change or if the employer suspects a change that could affect exposure levels.

Section 850.26(b) of the rule requires responsible employers to demarcate areas where worker exposures are at or above the action level in a manner that alerts workers to the boundaries of such areas. Under section 850.38 of this part, warning signs must be posted, stating that only authorized personnel are allowed in the area. Due to the serious nature of the adverse health effects associated with exposure to beryllium, no one should be in a regulated area without proper personal protection.

Section 850.26(c) requires responsible employers to limit access to regulated areas to authorized persons only. DOE intends that only individuals who are essential to the performance of work in the regulated area will be authorized to enter regulated areas. Responsible employers will have to evaluate the affected operation and determine which personnel (including managers, supervisors, and workers) are necessary for the performance of the work and thus are authorized to enter. Methods for preventing unauthorized persons from entering a regulated area may include posting a sign indicating that only authorized persons may enter, the use of locked access doors, and other

security measures as required by worksite conditions. DOE believes that employers are best equipped to determine whether any access control methods are needed in addition to warning signs specified in section 850.38.

Two commenters (Exs. 1, 31) suggested the incorporation of additional personal hygiene controls, specifically recommending that the rule prohibit smoking, eating, and drinking in regulated areas. DOE agrees with these commenters and has included in section 850.27 a prohibition on smoking, eating, and drinking in areas where beryllium is above the action level (i.e., in regulated areas).

Section 850.26(d) requires responsible employers to keep a record of all persons who enter regulated areas. The record must include the name of the person who entered, the date of entry, the time in and time out, and the type of work performed. One commenter (Ex. 26) stated that a log of worker activities is not needed unless DOE is conducting a "prospective risk assessment." This commenter believed that a simple log, only documenting who entered regulated areas, would be sufficient. The intended function of these records is clarified in section 850.39, Recordkeeping and Use of Information. DOE believes that recordkeeping must be adequate to permit DOE to monitor the effectiveness of each responsible employer's compliance activities and to provide information regarding each worker's history of potential exposures. This information will assist the responsible employer's occupational medicine staff in establishing appropriate medical surveillance protocols and will aid in DOE's efforts to establish links between working conditions and potential health outcomes. DOE has retained the proposed regulated area recordkeeping requirements in section 850.26(d) of the final rule.

#### Section 850.27—Hygiene Facilities and Practices

Section 850.27 of the final rule retains the NOPR requirements for responsible employers to provide change rooms or areas and hand washing and shower facilities for beryllium workers. In addition to these provisions, the final rule also requires responsible employers to provide lunchroom facilities that are readily accessible to beryllium workers, ensure that tables for eating are free of beryllium, that no worker is exposed at any time at or above the action level, and specifies that all of these facilities must comply with the requirements of 29 CFR 1910.141. These hygiene

provisions are common in OSHA's expanded health standards designed to protect workers from exposures to hazardous particulates.

Sections 850.27(a)(1) and (2) requires responsible employers to assure that workers observe prohibitions on the availability and use of cosmetics, tobacco and chewing products, and food and beverages in areas where beryllium is above the action level. Section 850.27(a)(3) requires responsible employers to prevent beryllium workers from exiting areas that contain beryllium with contamination on their bodies or their personal clothing. DOE believes that these provisions promote sound work place hygiene practices that may protect workers from exposure to other substances present in the workplace, as well as beryllium. These provisions are commonly included in OSHA's substance-specific health standards.

Section 850.27(b) requires responsible employers to provide clean change rooms or areas for workers who work in regulated areas. In addition, section 850.27(b)(1) requires that separate facilities be provided for workers to change into and store personal clothing and clean protective clothing and equipment. DOE believes that such provisions are necessary to prevent cross-contamination between work and personal clothing and the subsequent spread of beryllium into clean areas of the facility and into workers' private automobiles and homes. These provisions also address the need to prevent contamination of clean protective clothing and equipment, ensuring that protective clothing and equipment actually protect workers rather than contribute to their exposures.

Section 850.27(b)(2) requires that the change-rooms used to remove beryllium-contaminated clothing and protective equipment be maintained under negative pressure, or be located in a manner or area that prevents dispersion of beryllium contamination into clean areas.

DOE received two comments on the hygiene facilities and practices provisions of the NOPR. A commenter (Ex. 25) suggested that the requirement to provide change rooms, hand washing facilities, and showers be based on a hazard assessment. DOE believes that requiring responsible employers to perform a separate hazard assessment to determine the need for change rooms and showers is unnecessary and overly burdensome to responsible employers. The requirement for change rooms and showers is triggered by the requirement to establish regulated areas. Regulated

areas, in turn, are required wherever a hazard assessment identifies the potential for worker exposures at or above the action level. Thus, the requirement for change rooms and showers is already indirectly triggered by the results of a hazard assessment.

A commenter (Ex. 23) expressed concern that the impact and burden of constructing new change rooms for D&D closure sites has not been considered in the development of the change room provisions, and argued that alternative methods of compliance should be considered for D&D operations. In fact, DOE has addressed the economic impact of requiring responsible employers to provide change rooms for workers in the economic analysis prepared for the NOPR and made available for public review. Based on that economic analysis, DOE is aware that the cost of change rooms may be substantial for some DOE facilities. However, DOE believes that providing change rooms and showers for workers who work in regulated areas is the most effective method for preventing workers from carrying beryllium contamination on their work clothes and bodies from regulated areas to other areas of DOE facilities and to workers' private automobiles and homes. DOE is unaware of any equally effective alternative method for achieving this objective and, thus, has retained the change room and shower provisions in the final rule. The economic burden may be lessened by steps employers already have taken to comply with existing hygiene facility requirements. For example, 29 CFR 1910.120(n)(7) of OSHA's Hazardous Waste Operations and Emergency Response standard already requires employers to provide showers and change rooms for workers on D&D operations of six months duration or longer. DOE contractors at DOE sites are subject to this requirement through their contracts, which require compliance with DOE Order 440.1A or other analogous Orders or standards.

Consistent with the goal of preventing the spread of contamination into adjacent work areas and into affected workers' homes, section 850.27(c)(1) requires responsible employers to provide shower and hand-washing facilities for workers assigned to regulated areas. In addition to controlling the spread of contamination, showering also reduces the worker's period of exposure to beryllium by removing any beryllium that may have accumulated on the skin and hair. Requiring workers to change out of work clothes, which are segregated from their street clothes, and to shower before leaving the plant, leaving work clothing

at the workplace, significantly reduces the movement of beryllium from the workplace. These steps ensure that the duration of beryllium exposure does not extend beyond the work shift and, thus, protect workers and their families from off-site exposures. DOE recognizes that the installation of such facilities may take time in some cases. Accordingly, section 850.13(b) of the final rule allows responsible employers two years to achieve full compliance with the requirements of the rule.

Section 850.27(d) requires responsible employers to provide beryllium workers working in regulated areas with readily accessible lunchroom facilities in which tables for eating are free of beryllium and no worker is exposed at any time to a concentration of beryllium at or above the action level. DOE believes that it is imperative that workers have a clean place to eat to reduce the likelihood of additional exposure to loose beryllium dust through inhalation or ingestion.

Responsible employers must also assure that workers in regulated areas do not enter the lunchroom wearing protective clothing unless the clothing is properly cleaned beforehand. Responsible employers are given discretion to choose any method for removing surface beryllium from the clothing that does not disperse the dust into the air. These requirements are similar to the hygiene facilities and practices provisions in a number of OSHA's health standards.

#### Section 850.28—Respiratory Protection

Section 850.28 establishes the respiratory protection requirements for the CBDPP. Section 850.28(a) requires that responsible employers comply with OSHA's Respiratory Protection standard (29 CFR 1910.134). Section 850.28(b) requires that responsible employers provide appropriate respiratory protective equipment for all workers exposed, or potentially exposed based upon task analyses, to airborne concentrations of beryllium at or above the action level. This section also requires the responsible employer to ensure that workers use respirators. Section 850.28(c) requires the responsible employer to include in the respiratory protection program any beryllium-associated worker who requests to use a respirator, regardless of exposure level. Section 850.28(d) requires that responsible employers select and use only National Institute for Occupational Safety and Health (NIOSH)-approved respiratory protective equipment or, if none exist for a DOE beryllium activity, DOE-

accepted respiratory protective equipment.

Some of the requirements of section 850.28 are not new. For instance, DOE contractors have historically been required to comply with OSHA standards, including 29 CFR 1910.134, through contract provisions requiring compliance with DOE Order 440.1A and its predecessor orders. DOE also has followed OSHA standards in implementing the Federal Employee Occupational Safety and Health Program. DOE Order 440.1A requires employers to provide, and DOE workers to use, appropriate respiratory protective equipment necessary to protect workers from exposures to hazardous substances. In addition, the provisions of 29 CFR 1910.134 include a requirement that employers select only NIOSH-approved respirators. DOE Order 440.1A expands this requirement to allow for the use of DOE-accepted respiratory protection if NIOSH-approved respiratory protection does not exist for a specific DOE task. The provisions of section 850.28 that are new in this final rule are the requirements for the use of respiratory protection: (1) at the action level (rather than at OSHA's PEL); (2) based on the analyses of job activities (rather than only on measured levels); and (3) when requested by beryllium-associated workers regardless of exposure level. DOE does not expect that these new provisions will greatly increase the number of workers who wear respirators at DOE sites. Under current practice, DOE sites require use of respirators at their established action level (ranging from 0.2 to 1.0  $\mu\text{g}/\text{m}^3$ ) rather than at the PEL (see CBDPP Economic Analysis, Chapter 3, Section 3.2.8).

The NOPR (Section V, Request for Information) requested comments on changing the trigger for requiring respiratory protection from the PEL to the action level. Seven of the thirteen commenters on respiratory protection (Exs. 16, 18, 23, 25, 26, 28, 30) recommended that the rule be more protective of workers' health by requiring the use of respiratory protection at the proposed action level. None of the remaining four commenters on this issue (Exs. 3, 4, 20, 31) recommended retaining the PEL as a trigger. The seven supporters of using the action level as a trigger represent a wide variety of stakeholders. These commenters' predominant reason for recommending the more protective level as the trigger is the uncertainty about the protection afforded by the current PEL. These commenters provided the following additional reasons for lowering the respiratory protection

trigger from the PEL to the action level: (1) To provide a greater margin of safety because of the imperfections in measuring exposure levels; (2) to provide a greater margin of safety because of the imperfections in understanding how to set exposure limits for materials, such as beryllium, for which the cause of illness is the body's immune system reaction; and (3) to establish an internally consistent CBDPP which includes consistent triggers for its protective provisions and, therefore, is rational and easy to communicate. DOE generally agrees with these comments and has revised section 850.28 to require the use of respirators when exposures are at or above the action level.

One commenter (Ex. 3) was concerned that using the action level as a trigger for respiratory protection would render the action level a de facto PEL, because OSHA uses the PEL as the trigger for respiratory protection in OSHA substance-specific standards. Similarly, two commenters (Exs. 4, 20) believed that using the action level as a trigger for respiratory protection signifies that DOE believes that the PEL is not adequately protective. Section I.C., Health Effects, of the Supplementary Information section provides a detailed explanation of the difficulties of determining a safe threshold level for occupational exposure to beryllium, given the current state of knowledge of occupational exposures and the etiology of beryllium disease. DOE's strategy is to require a rigorous program to prevent chronic beryllium disease by reducing and minimizing exposures, while studies continue that may provide the data needed to establish a safe level of exposure to airborne beryllium. The preamble discussions of sections 850.22 and 850.23 explain in greater detail DOE's rationale for continuing to defer to OSHA's PEL, while establishing a more protective action level for DOE.

One commenter (Ex. 26) recommended that the responsible employer provide respiratory protection when warranted based upon an analysis of the worker's job activities. DOE recognizes that many tasks involving beryllium may result in high concentrations of airborne beryllium due to a procedure error, a work error, or an equipment failure. An analysis of the worker's job activities will determine whether respiratory protection is necessary for such tasks. Therefore, DOE added section 850.28(b)(2) requiring responsible employers to provide respiratory protection for task involving such circumstances.

Two commenters (Exs. 26, 30) recommended that the responsible employer provide respiratory protection when it is not otherwise required if requested by a worker due to the uncertainty about what is a safe level and uncertainties in monitoring and controlling a substance like airborne beryllium. DOE agrees with these commenters and has added section 850.28(c), which requires the responsible employer to provide respiratory protection upon the request of the beryllium-associated worker regardless of measured exposure levels.

One commenter (Ex. 3) recommended requiring respiratory protection for exposures at or above the STEL. DOE agrees with the commenter that the STEL would have been an appropriate trigger for respiratory protection if the action level had remained at  $0.5 \mu\text{g}/\text{m}^3$ . However, a STEL of  $10 \mu\text{g}/\text{m}^3$  for 15 minutes, as proposed in the NOPR, would provide no added protection for workers as a trigger for respiratory protection in the final rule because its action level of  $0.2 \mu\text{g}/\text{m}^3$  will be exceeded in less than 15 minutes where exposure levels are at  $10 \mu\text{g}/\text{m}^3$ . As explained in the discussion of section 850.22, DOE has decided that it would not be appropriate, given the current science, to establish a lower STEL in this rule.

DOE has clarified its expectations on the use of DOE-accepted respirators in response to one commenter (Ex. 31) who questioned the use of DOE-accepted respirators rather than NIOSH-approved respirators. This requirement as proposed in section 850.28(c) could have been interpreted, as it was by this commenter, to mean that responsible employers could choose between NIOSH-approved respirators and DOE-accepted respirators. This was not DOE's intent. DOE's revision in section 850.28(d)(2) clarifies that responsible employers may use the DOE-accepted respirators only if NIOSH-approved respirators do not exist for particular DOE tasks. This section also references DOE's Respirator Acceptance Program to clarify that DOE only accepts for use respirators that DOE deems acceptable based upon the results of a formal testing and evaluation program.

One commenter (Ex. 31) recommended that the rule specify that all respiratory protective equipment be furnished at no cost to the worker. Section 850.28(a) requires that responsible employers comply with 29 CFR 1910.134, Respiratory Protection, which currently requires in section 1910.134(c)(4), that employers provide respirators at no cost to the employee. Accordingly, DOE will continue to rely

upon OSHA's requirements in lieu of making specific changes to the rule.

#### Section 850.29—Protective Clothing and Equipment

Section 850.29 establishes the protective clothing and equipment provisions (other than respirator use) of the CBDPP. The objectives of this section are to provide clothing and equipment that protects workers against the hazards of skin and eye contact with dispersible forms of beryllium and to prevent the spread of contamination outside work areas that could occur from the improper handling of beryllium-contaminated clothing and equipment.

DOE has clarified the proposed requirement for the responsible employer to provide protective clothing and equipment where skin or eye contact with beryllium is possible. Section 850.29(a) requires that responsible employers provide protective clothing and equipment to beryllium workers where dispersible forms of beryllium may contact workers' skin, enter openings in workers' skin, or contact workers' eyes.

The openings in workers' skin could include fissures, cuts, and abrasions. DOE recognizes that the potential for the development of contact dermatitis, chronic ulcerations, and conjunctivitis is mainly associated with contact with soluble forms of beryllium compounds that are not included in the definition of "beryllium" in this rule. Insoluble beryllium, however, has also been shown to cause chronic ulcerations if introduced into or below the skin via cuts or abrasions (ref. 34). DOE believes that it is prudent industrial hygiene practice to avoid skin or eye contact with a material that causes chronic ulcerations and, therefore, has included protecting workers' skin and eyes from contact with insoluble beryllium in section 850.29(a). The protective equipment required by this section could include coveralls, overalls, jackets, footwear, headwear, face shields, goggles, gloves, and gauntlets, depending on the nature of the operation and the related skin and eye exposure hazards involved.

In the NOPR, DOE requested information regarding the presence of soluble beryllium compounds within the DOE complex and the appropriateness of the exclusion of such compounds from the definition of "beryllium" in the proposed rule. In addition, DOE requested comments regarding the need for the protective clothing and equipment provisions of proposed section 850.29(a)(2), given a DOE survey that had found that soluble

beryllium compounds apparently were not present within the DOE complex. One commenter (Ex. 4) recommended excluding soluble beryllium from section 850.29 based on that survey result. However, as a result of other public comments, DOE learned that that survey result was incorrect because one DOE commenter (Ex. 16) indicated that its facilities contain soluble beryllium. Moreover, other commenters (Exs. 26, 30) pointed out that DOE facilities may contain soluble beryllium in the future.

Nevertheless, DOE has not changed the definition of "beryllium" in the final rule to include soluble forms of beryllium, because the principal focus of this rule is on preventing CBD, which is caused by exposure to insoluble forms of beryllium. One commenter (Ex. 26) correctly pointed out that the skin and eye effects that this section is intended to prevent are different health effects than CBD. Although another commenter (Ex. 25) questioned DOE's view that soluble beryllium exposure to the lungs does not cause CBD, DOE finds no evidence in the information on health effects presented in section I.C. that exposure of the lungs to soluble forms of beryllium causes CBD. DOE expects responsible employers to address soluble beryllium hazards in existing worker protection programs under DOE Order 440.1 or analogous Orders or standards cited in responsible employers' contracts with DOE.

Section 850.29(a)(1) requires responsible employers to provide protective clothing and equipment to beryllium workers, at no cost, where airborne beryllium levels are measured or presumed to be at or above the action level, because elevated airborne levels are likely to generate elevated surface levels which represent a skin and eye hazard. DOE has included "presumed to be" in section 850.29(a)(1) in response to a recommendation that one commenter (Ex. 26) made with respect to respiratory protection that applies equally to protective clothing and equipment. The commenter recommended that the responsible employer provide respiratory protection when warranted based upon task analyses. DOE recognizes that many tasks involve beryllium that could readily become airborne in high concentrations due to a procedure error, a worker error, or an equipment failure, but which will have no measurable exposure level unless one or more of these problems occur. DOE believes that an analysis of the worker's job activities would show the need for protective clothing and equipment, and respiratory protection to perform such activities.

Another commenter (Ex. 3) recommended that DOE add a surface contamination level that would also trigger the requirement to provide protective clothing and equipment. DOE agrees with this commenter because elevated surface levels represent a skin and eye hazard, and, accordingly, DOE has added paragraphs (a)(2) and (a)(3) to this section. Section 850.29(a)(2) requires responsible employers to provide protective clothing and equipment to beryllium workers where surface contamination levels are measured to be, or prior to initiating work are presumed to be, above the housekeeping level prescribed in section 850.30. Section 850.29(a)(3) requires responsible employers to provide protective clothing and equipment to beryllium workers where surface contamination level results obtained to confirm housekeeping efforts are above the prescribed housekeeping level.

Section 850.29(a)(2) addresses the situation in which the responsible employer is planning to conduct a task involving beryllium and has time to measure or estimate surface levels before the task begins. Section 850.29(a)(3) addresses the situation in which the responsible employer learns from routine surface monitoring conducted at the end of a shift that housekeeping efforts did not reduce surface levels to below the surface contamination level specified in section 850.30. DOE recognizes that sampling to confirm the adequacy of housekeeping efforts at the end of shifts, and the turnaround time of as much as 24 hours for sample analysis, could result in workers not using protective clothing and equipment for more than a day where surface contamination levels exceed the prescribed surface contamination level. However, DOE believes that these situations will be rare, because routine post-shift cleaning should keep these surface contamination levels from becoming excessive. Also, DOE believes that responsible employers will be motivated to reduce turnaround times for analyses in their efforts to reduce and minimize exposures. DOE selected the term "results" in section 850.29(a)(3) to avoid creating a situation in which the responsible employer would violate the rule simply because the employer did not know that the housekeeping criterion had been exceeded until surface monitoring results were available.

Section 850.29(a)(4) requires the responsible employer to provide protective clothing and equipment upon the request of the beryllium-associated

worker, regardless of measured exposure levels.

Section 850.29(b) incorporates into this rule 29 CFR 1910.132, Personal Protective Equipment General Requirements. This OSHA standard is responsive to a commenter's (Ex. 31) recommendation that the rule should require the responsible employer to furnish the clothing and equipment at no cost to the employee, and covers other well-established practices, such as the topics to be included in protective clothing and equipment training, and ensuring that protective clothing and equipment fits properly. This requirement to comply with 29 CFR 1910.132 is consistent with the general worker protection provisions of DOE Order 440.1A, and analogous Orders or standards cited in the responsible employer's contract with DOE.

Section 850.29(c)(1) requires the responsible employer to establish procedures for donning, doffing, handling, and storing protective clothing and equipment that prevent beryllium workers from exiting areas that contain beryllium with contamination on their bodies or their personal clothing. DOE added this provision because one commenter (Ex. 3) correctly pointed out that it was omitted in the proposed rule and is needed to ensure that workers do not track contamination out of areas that contain beryllium. The same commenter recommended that DOE explicitly require HEPA vacuuming of contaminated protective clothing and equipment as part of the required doffing procedure. This final rule does not include a requirement to include HEPA vacuuming in doffing procedure, because DOE believes that this would not allow the employer sufficient flexibility in selecting cleaning procedures.

Section 850.29(c)(2) requires that the procedures for donning, doffing, handling, and storing protective clothing and equipment include a requirement that beryllium workers exchange their personal clothing for full-body protective clothing and footwear (work shoes or booties) before beginning work in regulated areas. This change from personal clothes into protective work clothing must occur in a change room that protects the worker's personal clothes and clean protective clothing from beryllium contamination. DOE believes that the use of full-body protective clothing in lieu of personal clothes in regulated areas is necessary to prevent the spread of beryllium contamination into adjacent work areas and to preclude the possible transport of beryllium onto affected workers' private

property. A recent study (ref. 35) has documented the transport from work areas of beryllium on workers' hands and inside their personal vehicles.

One of DOE's objectives is to prevent the spread of beryllium contamination, thereby reducing the number of persons exposed and the opportunities for potential exposures. Thus, sections 850.29(d) through (f) establish provisions to control the handling, maintenance, cleaning, and disposal of beryllium-contaminated protective clothing and equipment.

Section 850.29(d) requires the responsible employer to ensure that workers do not remove beryllium-contaminated protective clothing and equipment from areas that contain beryllium, except for authorized activities such as cleaning and repairing the clothing and equipment. DOE replaced "site" in the proposed rule with "area that contains beryllium" in the final rule to clarify its intent to minimize contamination of other areas at the site as well as outside the site.

Section 850.29(e) requires the responsible employer to prohibit the removal of beryllium from protective clothing and equipment by blowing, shaking, or other means that may disperse beryllium into the air. Although DOE generally believes that responsible employers should have the flexibility to determine the most appropriate means to clean contaminated clothes based on their own specific worksite conditions, DOE has included this well recognized and accepted industrial hygiene control to prevent the dispersion of beryllium particles into the workplace atmosphere.

Section 850.29(f), which was proposed as section 850.29(c), requires responsible employers to clean, launder, repair, and replace protective clothing and equipment as needed to ensure its continued effectiveness in protecting workers. This section allows contractors flexibility in determining the required frequency for laundering protective clothing based on specific work conditions and the potential for contamination.

Section 850.29(f)(1), which was proposed as section 850.29(b), paragraphs (1)–(2), requires the responsible employer to ensure that protective clothing and equipment removed for laundering, cleaning, maintenance, or disposal, is placed in containers that prevent the dispersion of beryllium dust, and that these containers are labeled in accordance with section 850.38. These warning labels will help ensure appropriate subsequent handling of beryllium-



contaminated materials and may prevent inadvertent exposures that could result if laundry, maintenance, or disposal personnel are not aware of the beryllium contamination and the precautions prescribed by the responsible employer to prevent the release of airborne beryllium. In section 850.29(f)(1) of the final rule, DOE has deleted the words "impermeable" and "are designed" which were in proposed section 850.29(b)(1) in response to a commenter's (Ex. 8) recommendation to clarify DOE's intent. This change eliminates the possible implication that DOE expects responsible employers to provide special containers even if existing containers are capable of preventing the spread of contamination.

Section 850.29(f)(2), which was proposed as section 850.29(d), requires the responsible employer to ensure that organizations that launder or clean DOE beryllium-contaminated protective clothing or equipment are informed that exposure to beryllium is potentially harmful, and that clothing and equipment should be laundered or cleaned in the manner prescribed by the responsible employer to prevent the release of airborne beryllium. DOE replaced "any individual" with "organizations" to clarify that DOE's objective for this section is to ensure that any organization that launders beryllium contaminated clothing is informed of the hazards of handling beryllium contaminated items so that the organization can take steps to protect its workers. The proposed wording "any individual" could have been interpreted as establishing a direct relationship between the responsible employer that generated the contaminated clothing and the employee of the laundry or cleaning organization, which is not DOE's intent. Also, DOE clarifies in section 850.29(f)(2) that this section requires informing both on-site cleaning and laundry services, as well as off-site cleaning and laundry vendors. On-site cleaning and laundry services are covered by this rule, but may not know about the presence and hazards of beryllium on the clothing and equipment unless the responsible employer informs them.

DOE has deleted the words "at or above the action level or above the STEL," which in proposed section 850.29(a) qualified the requirement to inform downstream launderers or cleaners of beryllium-contaminated protective clothing and equipment. This change is consistent with final section 850.25, which requires reduction and minimization, if practicable, where

exposure levels are below the action level.

One commenter (Ex. 31) recommended including in the rule provisions for preventing heat stress. DOE recognizes that requiring protective clothing and equipment for dispersible forms of beryllium compounds at the final rule's lower action level is likely to result in greater use of protective clothing and equipment, including respirators, and consequently greater potential for heat stress. DOE believes that the health benefit from lowering the risk of CBD outweighs any increased health risk caused by heat stress that results from the requirements of this section. DOE has not included heat stress provisions in this rule because it is a potential problem for many DOE activities that require the use of protective clothing and equipment; and DOE expects heat stress issues to be addressed in the responsible employer's existing worker protection program.

#### Section 850.30—Housekeeping

Section 850.30 establishes the housekeeping provisions of the CBDPP. Good housekeeping practices are necessary in operational areas where beryllium is used or handled, to prevent the accumulation of beryllium contamination on surfaces throughout the workplace. Such accumulations, if not controlled, may lead to the spread of beryllium contamination on surfaces and the re-suspension of beryllium particles into the air, both in the area where beryllium dusts were originally generated and in other work areas. In addition, the uncontrolled accumulation of beryllium-contamination on equipment in the workplace increases the potential for worker exposure to beryllium during the performance of equipment maintenance, handling, and disposal tasks.

DOE in section 850.30(a) has established that the removable contamination housekeeping level on surfaces must not exceed  $3 \mu/100 \text{ cm}^2$  during non-operational periods. Establishing a surface removable contamination limit reduces the potential for spread of beryllium contamination. Responsible employers must perform measurements to determine if the operational work area is in compliance with the rule. In addition, monitoring surface contamination levels is an indispensable tool for ensuring that beryllium emissions from operations are under control. The only practical method of monitoring surface levels is to maintain the surface contamination at an established housekeeping level so

that elevations above that level can readily be detected.

The performance of housekeeping tasks can, in and of itself, lead to worker exposures to beryllium-contaminated dust. Therefore, the housekeeping section also seeks to prevent the spread and re-suspension of dust during housekeeping activities.

Two commenters (Exs. 26, 28) questioned the scientific basis for establishing a  $3 \mu/100 \text{ cm}^2$  surface removable contamination level. In addition, these two commenters stated that the variability associated with wipe sampling makes surface sampling method an unreliable method for sampling. DOE views wipe sampling as a useful and accepted method for providing qualitative information on chemical contamination of work surfaces, and agrees with the following statement in the OSHA Technical Manual (Section II: Chapter 2, Sampling for Surface Contamination): "Wipe sampling is an important tool of work site analysis for both identifying hazardous conditions, and in evaluating the effectiveness of \* \* \*

housekeeping, and decontamination programs." Accordingly, this requirement is intended only as a housekeeping performance measure, and should not be viewed as a mechanism for measuring, or predicting airborne concentrations of beryllium. In addition, this requirement only applies to removable or loose surface contamination, which could become re-suspended in the workplace air or spread to non-controlled areas.

DOE does not intend the requirement for surface wipe sampling in this rule to preclude the use of other surface sampling methods for measuring beryllium contamination. DOE agrees with comments calling for more research (Exs. 16, 28) and encourages the use, research, and development of new technologies such as direct reading instruments, which may provide better results than wipe sampling.

Section 850.30(a) requires that responsible employers conduct routine surface sampling in operational areas, to ensure the effectiveness of their housekeeping efforts. This sampling would not include the interior of installed closed systems such as enclosures, glove boxes, chambers, or ventilation systems. Sampling should not be carried out during a normal work shift, but rather it should be undertaken after normal clean-up and during non-operational periods.

Affected sites throughout DOE have already established, under the interim CBDPP, allowable beryllium surface contamination levels to ensure the



effectiveness of their housekeeping procedures. These levels range from 1 to greater than 5  $\mu\text{g}/100\text{ cm}^2$ , with the majority of the sites using approximately 3  $\mu\text{g}/100\text{ cm}^2$  or less as the criterion for determining the cleanliness of their working environment outside of regulated areas. Comments on the NOPR called for setting levels ranging from less than 1  $\mu\text{g}/100\text{ cm}^2$  (Exs. 14, 18) to 5  $\mu\text{g}/100\text{ cm}^2$  (Ex. 24). Information collected from the sites during the development of the interim beryllium CBDPP indicated that the Pantex and Y-12 facilities currently have an allowable surface concentration level of 25  $\mu\text{g}/100\text{ cm}^2$  for regulated areas. Los Alamos National Laboratory (LANL) procedures call for re-evaluation of the operations with additional cleaning of beryllium operations areas at levels greater than 26  $\mu\text{g}/\text{ft}^2$  (2.8  $\mu\text{g}/100\text{ cm}^2$ ). Lawrence Livermore National Laboratory (LLNL) indicated those areas with surface concentrations greater than 3  $\mu\text{g}/100\text{ cm}^2$  are designated as regulated areas. Rocky Mountain Remediation Services (a sub-contractor at Rocky Flats) indicated that a surface contamination level greater than 25  $\mu\text{g}/\text{ft}^2$  (2.7  $\mu\text{g}/100\text{ cm}^2$ ) outside of regulated areas triggers clean up actions at its site. The AWE facility at Cardiff (United Kingdom) has utilized a surface action level of 10  $\mu\text{g}/\text{ft}^2$  (1  $\mu\text{g}/100\text{ cm}^2$ ) outside of regulated areas since 1990. Based on this range of data, DOE adopted the 3  $\mu\text{g}/100\text{ cm}^2$  housekeeping level in the proposed rule and continues to believe it is a reasonable surface removable contamination level that should not be exceeded.

One commenter (Ex. 3) recommended that the surface removable contamination level be the same level as the criterion for releasing contaminated equipment for other uses. Another commenter (Ex. 23) objected to establishing a single surface limit for removable beryllium contamination that would be both a housekeeping and release level, recommending instead a tiered approach, with different levels for normal or safe work conditions (and free release of equipment), for beryllium work, and for special work conditions. For the reasons discussed under section 850.31, Release Criteria, DOE has adopted different levels for the release of equipment that depend on the intended future use of the equipment.

One commenter (Ex. 24) expressed concern that certain beryllium oxide weapons components could not meet the 3  $\mu\text{g}/100\text{ cm}^2$  level, and recommended that weapons components be exempt from surface contamination limits. DOE has revised section 850.30 to clarify that the surface

removable contamination level is to be measured post-shift, and that the purpose of the surface level is not to have an absolute value of 3  $\mu\text{g}/100\text{ cm}^2$  at all times during the machining or working with beryllium or beryllium parts. DOE is aware that it may not be possible to maintain surface levels of beryllium in an operational work area below the 3  $\mu\text{g}/100\text{ cm}^2$  limit at all times. Again, the surface removable contamination level is intended as a post-shift measure of the effectiveness of routine housekeeping efforts.

DOE emphasizes that the housekeeping concerns addressed by section 850.30 apply to areas where workers may be exposed to beryllium, not to closed-off rooms or buildings. To make this clear, DOE has added the term "operational areas" in section 850.30(a). If routine surface sampling during non-operational or post-shift periods shows that the removable contamination level has been exceeded, clean-up measures must be instituted.

DOE agrees with the comment (Ex. 28) that the meaning of the term "removable" contamination may not be clear. Therefore, DOE has added a new definition of "removable contamination" and deleted the definition of "surface contamination" in section 850.3. The definition of "removable contamination" is taken from the U.S. Department of Energy Radiological Control Manual (DOE/EH-0256T Revision 1, April 1994). Use of this language in this rule maintains a consistent approach with DOE's radiological surface sampling program.

Two commenters suggested the use of wet wipes for surface sampling, while another commenter (Ex. 24) indicated that there is no basis for the application of a wet method. NIOSH, in its recent publication on beryllium contamination inside worker vehicles, supports the use of a wet wipe sampling method to collect beryllium samples in potentially contaminated employee vehicles (ref. 35).

The use of diverse sampling methods (e.g., differences in type of sample media, type of solvent (if any) on the sample media, area sampled, etc.) may easily lead to the reporting of inconsistent results. To reduce the variability in reported surface contamination across the DOE complex, DOE recommends, but does not require, the use of a single sampling method: NIOSH method 9100 (NIOSH Manual of Analytical Methods, 4th Edition, August 15, 1994, Lead in Surface Wipe Samples). This method may have to be modified for surfaces smaller than 100  $\text{cm}^2$  using a procedure such as that described in Appendix D of 10 CFR part

835. Sites using other methods, e.g., dry wipe sampling, should transition to the NIOSH method in a cost-effective manner. Current data is not clear on the relative efficiency of dry versus wet sampling on the variety of surfaces found in the DOE. Therefore, immediate adoption of the NIOSH method at sites across DOE may be impractical and add no immediate value to worker health and safety. In the long term, by recommending a single method (a wet method) for conducting the surface sampling, DOE believes that the variability associated with surface sampling will be reduced without specifying a particular method in the rule.

One commenter (Ex. 3) suggested that the term "routine" in section 850.30(a) should be more clearly defined, i.e., weekly or monthly. Because DOE believes that this rule should be as performance-based as possible, the frequency of "routine" monitoring procedures under this section should be developed by the local health and safety specialist (industrial hygienist) based on the specific circumstances at the site.

Section 850.30(b) prohibits the use of compressed air or dry methods and requires the use of vacuuming, wet or similar methods for the cleaning of beryllium-contaminated floors and other surfaces. The purpose of using these methods is to reduce or eliminate the potential for re-suspension of beryllium dust into the air and breathing zone of the worker.

One commenter (Ex. 23) requested flexibility in cleaning methods, such as permitting the use of sticky tack cloths. DOE agrees with the comment and in the final rule has allowed the use of other cleaning methods, such as sticky tack cloths, that have the same end result as wet vacuuming (i.e., a reduction of dust-producing cleaning methods). These are appropriate methods for complying with the housekeeping requirement of the rule.

Section 850.30(c) requires the use of HEPA filters in all vacuuming operations used to clean contaminated or potentially contaminated surfaces, and further requires filter replacement as needed, to maintain the capture efficiency of the vacuum system. The use of wet methods for reducing or minimizing the dispersal of dust during general housekeeping tasks, such as sweeping, is a common industrial hygiene practice. HEPA filters must be used to prevent the spread of dust by effectively collecting the dust that is collected by vacuum systems. Responsible employers should have procedures for the cleaning or replacement of filters that ensure

minimum employee exposure to beryllium dust on the filter.

As discussed in earlier sections of this analysis, the movement of contaminated equipment from a regulated area to a nonregulated area may result in the spread of beryllium contamination to the nonregulated area. To prevent the potential spread of contamination from the performance of housekeeping activities required by this rule, section 850.30(d) requires that cleaning equipment used in areas where surfaces are contaminated or potentially contaminated with beryllium be labeled, controlled, and not used for other, non-hazardous materials. These procedures are similar to those required under OSHA's asbestos standard for equipment used during cleanup or removal of asbestos from buildings.

#### Section 850.31—Release Criteria

Section 850.31 establishes beryllium contamination levels and other requirements that must be met before equipment and other items used in beryllium work areas may be released or transferred to the general public and non-beryllium areas of DOE facilities, or to facilities engaged in work involving beryllium. DOE requested comments on the setting of "beryllium free-release" public contamination levels in the NOPR. After considering the comments received in response to this broad request for views and information, DOE reopened the comment period on June 3, 1999, to invite public comment on specific options for release criteria that were being considered by DOE (64 FR 29811). Section 850.31 reflects DOE's consideration of the substantial number of comments received from organizations and individuals on this topic.

In the notice of reopening of the comment period, DOE suggested that a reasonable contamination level for release of equipment and other items to the public for non-beryllium uses would be  $0.1 \mu\text{g}/100\text{cm}^2$ . This level was based on the housekeeping and release levels believed to be in effect at various DOE facilities and the AWE facility in the United Kingdom. DOE also stated that it was inclined to adopt a contamination level of  $3 \mu\text{g}/100 \text{ cm}^2$  for release of items for beryllium work in other facilities. This level was based principally on the practice at the Rocky Flats.

Ten organizations and individuals submitted comments that recommended release level values. These values ranged from non-detectable to  $3 \mu\text{g}/100 \text{ cm}^2$  for public release and non-detectable to  $10 \mu\text{g}/100 \text{ cm}^2$  for release to beryllium facilities.

One commenter (Ex. 47) stated that there should be a single contamination level for both the housekeeping standard for beryllium areas and for release of items for beryllium and non-beryllium uses. Another commenter (Ex. 43) urged DOE to adopt a single criterion for release to the public and DOE non-beryllium facilities and to beryllium-handling facilities because it would be simpler to administer. DOE does not agree with these comments, because the workers in operational areas where beryllium is used have been trained in the hazards of beryllium and the proper use of protective equipment that is required to be worn in those areas. DOE does not believe that the general population or DOE non-beryllium workers should be exposed to the same level of a hazardous material as workers who have been trained in the safe handling of that material. DOE, therefore, has included in the rule separate requirements for the release of beryllium-contaminated equipment and other items to facilities engaged in beryllium work and for releases to the general public or DOE non-beryllium facilities.

Section 850.31(a) requires the responsible employer to clean beryllium-contaminated equipment and other items to a contamination level that is as low as practicable, but not to exceed the removable contamination levels specified in section 850.31(b), for release to the general public or to non-beryllium areas of DOE facilities, and section 850.31(c), for release to facilities performing work with beryllium. In addition, DOE has included in these sections other requirements that are designed to protect workers and others from the hazards associated with exposure to beryllium. DOE uses the words "and other items" after "equipment" in section 850.31(a) to cover tools, supplies, documents, etc., and any personal property in beryllium-handling areas that may not be encompassed by the term "equipment." The phrase "equipment and other items" does not include real property or buildings.

*Release to the public and for use in DOE non-beryllium areas.* Section 850.31(b)(1) sets the removable contamination level for equipment and other items to be released to the general public or for use in DOE non-beryllium work areas at  $0.2 \mu\text{g}/100\text{cm}^2$  or the concentration level of beryllium in soil at the point of release, whichever is higher. The equipment also must be labeled, in accordance with section 850.38(b), to warn recipients of potential beryllium hazards. The responsible employer must condition

the release of equipment and other items to the public based on the recipient's commitment to implement controls to ensure that exposure does not occur. Such a commitment should be based on the nature and possible future uses of the equipment and other items, the nature of the beryllium contamination, and whether exposure to beryllium is foreseeable.

In the notice of reopening, DOE referenced a comment by the AWE (Ex. 1) which reported that the housekeeping surface action level in its Cardiff, Wales facility had been reduced to  $1 \mu\text{g}/\text{ft}^2$  (about  $0.1 \mu\text{g}/100 \text{ cm}^2$ ) in 1990. DOE reasoned that, based on the AWE experience and release limits included in DOE facilities' interim CBDPPs, a public release limit as low as  $0.1 \mu\text{g}/100 \text{ cm}^2$  would be achievable. Several commenters (Exs. 41, 43, 46, 47, 51) argued that this level would be difficult and costly to achieve, and that there is no technical basis for concluding that it would be more beneficial than a higher level. AWE (Ex. 38) commented that it is not using  $0.1 \mu\text{g}/100 \text{ cm}^2$  as a release level; its current policy is to dispose of contaminated items in a landfill site. The Pantex Plant (Ex. 46) stated that its reported use of  $0.1 \mu\text{g}/100 \text{ cm}^2$  as a release criterion was incorrect, possibly due to a typographical error, and it recommended using  $3 \mu\text{g}/100 \text{ cm}^2$  for the public release limit. Rocky Flats (Ex. 47) pointed out significant differences between the AWE Cardiff facility, which is a stable work environment, and the Rocky Flats facility, which is engaged in decontamination and decommissioning work. Two commenters (Exs. 43, 46) argued that a surface removable contamination level of  $0.1 \mu\text{g}/100 \text{ cm}^2$  could easily be exceeded by background levels of beryllium.

Other commenters (Exs. 44, 45, 48, 49) took the position that any detectable level of beryllium on the surface of an item should be presumed to present a health risk and, therefore, that no item having a detectable level of beryllium should be released to anyone for any purpose. One commenter (Ex. 48) stated that the correlation between surface beryllium levels and associated health hazards is unknown, and the possibility exists for fixed or inaccessible beryllium to be liberated when equipment is worked on or repaired. Another commenter (Ex. 49) stated that DOE should take a cautious stance because of the current lack of information regarding the nature of the exposure-response relationship and the factors that underlie individual sensitization towards beryllium. Two commenters (Exs. 49, 52) recommended life-cycle

administrative controls for beryllium-contaminated equipment.

Section 850.31(b)(3) responds to the recommendation of comments (Exs. 26, 38) calling for a risk assessment that considers the downstream user's exposure potential, the history and type of equipment, and the nature of the contamination, in order to decide whether and how to release equipment and other items for non-beryllium uses. As recognized by DOE in the reopening notice, surface or wipe sampling is not an adequate means of characterizing potential exposure risk. For example, a lathe or other piece of equipment released because it is determined to be beryllium-free on the surface may contain internal beryllium dust that could become airborne and present a health hazard during future maintenance. On the other hand, other types of equipment may contain internal beryllium that is combined with other substances (e.g., grease) which would make it unlikely that the beryllium would ever become airborne. The presence of this type of suspended contamination, even at levels above the surface release criterion, would not necessarily present a health hazard. Accordingly, an assessment of potential risk of exposure should be undertaken before the release of any equipment or other item to either the general public or to DOE for non-beryllium uses. Based upon the assessment, the decision should be made as to ultimate disposition of the equipment and any conditions that should be placed on its future use.

After considering the comments, DOE is persuaded that it would be costly, if not infeasible, to implement a contamination level of  $0.1 \mu\text{g}/100 \text{ cm}^2$  or lower as the public release criterion. Section 850.31(a)(1) requires responsible employers to clean equipment and other items to the lowest contamination level practicable and to ensure that removable contamination on surfaces does not exceed  $0.2 \mu\text{g}/100 \text{ cm}^2$  or the concentration level of beryllium in local soil. This removable contamination criterion is based, in large measure, on information provided in comments submitted by the contractor that manages the Rocky Flats facility (Ex. 47). To comply with the interim CBDPP established by DOE Notice 440.1, Rocky Flats conducted an extensive site characterization (over 6000 samples) using  $0.2 \mu\text{g}/100 \text{ cm}^2$  as the target contamination level. Rocky Flats reported that they found the  $0.2 \mu\text{g}/100 \text{ cm}^2$  to be an achievable level and determined (using recently published re-suspension factors) that any airborne beryllium generated from

re-suspending beryllium from surfaces, even with some beryllium surface levels above  $0.2 \mu\text{g}/100 \text{ cm}^2$ , would be expected to be well below the EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) limit of  $0.01 \mu\text{g}/\text{m}^3$  and therefore, at safe levels. EPA's NESHAP is the national standard for community air that the population continuously breathes.

DOE has addressed the concerns of commenters (Exs. 46, 50) that it may not be possible to clean equipment and other items to below the natural background of beryllium in local soil. It is highly unlikely that this rule would apply to soil because soils generally contain less than 0.1 percent beryllium and, therefore, is not considered beryllium for the purposes of this rule. Nonetheless, DOE included in section 850.31(b)(3) the words "or the concentration level of beryllium in local soil at the point of release" to eliminate the possibility that the rule would compel a responsible employer to clean local soil off of equipment and other items before release.

DOE does not agree with the view of some commenters that, in the absence of scientific evidence of a threshold or "safe" level of exposure to beryllium, the surface contamination release level should be at the limit of detection or zero. Although one commenter (Ex. 45, 45B) submitted information indicating that re-suspension of beryllium in the air is possible on surfaces with less than  $1.0 \mu\text{g}/100 \text{ cm}^2$  of beryllium, there currently is no scientific evidence that surfaces cleaned to that level would result in airborne concentrations of beryllium at levels that would be harmful to workers.

DOE has addressed the concern about the potential for exposure to re-suspended beryllium by requiring a case-by-case assessment of risk before equipment and other items are released for non-beryllium uses. There is likely to be wide variation in these situations, and DOE is not prepared at this time to prescribe uniform management controls. However, this is an area for which DOE may develop guidance to assist field elements, as experience is gained under this rule.

One commenter (Ex. 43) recommended establishing a general surface release level of  $1 \mu\text{g}/100 \text{ cm}^2$ , plus labeling of items. The commenter suggested the use of labels to shift responsibility for controlling future exposures to the recipients of the equipment or items. DOE does not believe that simply cleaning the outside of the equipment and other items and providing warning to the new user is adequate because some recipients,

particularly recipients who have not performed work using beryllium, may not fully understand the risks associated with beryllium exposure.

Release for beryllium work. Section 850.31(c)(1) sets the contamination level for equipment or other items released for use in other facilities engaged in beryllium work at  $3 \mu\text{g}/100 \text{ cm}^2$ . The equipment or item also must be labeled in accordance with section 850.38(b). Section 850.31(c)(3) requires the responsible employer to ensure that a released item is enclosed or placed in sealed, impermeable bags or containers to prevent exposure to beryllium during handling and transportation to its destination. Enclosure of equipment and other items to be released to other beryllium operations can be accomplished by any practical means, such as wrapping in plastic.

Several commenters recommended that DOE establish a higher surface contamination release level for equipment and other items to be transferred to another facility for beryllium work than is allowed for items released to the public or for use in DOE non-beryllium work (Exs. 38, 41, 42, 46, 51). Surface contamination levels recommended by the commenters (see Table 9) for release of equipment and other items to be used in beryllium areas range from 0 and non-detectable to  $10 \mu\text{g}/100 \text{ cm}^2$ . Rocky Flats (Ex. 47) previously established a release level for equipment and other items to be transferred to other DOE facilities for beryllium work at  $2.5 \mu\text{g}/100 \text{ cm}^2$ . Several commenters (Exs. 41, 42, 51) and a number of the DOE sites reporting release levels support the use of  $3 \mu\text{g}/100 \text{ cm}^2$  or less as a release level for equipment and other items that will be used for beryllium work.

Based upon current surface sampling technology, DOE sees no appreciable difference between  $2.5 \mu\text{g}/100 \text{ cm}^2$  and  $3 \mu\text{g}/100 \text{ cm}^2$  and, therefore, has adopted the  $3 \mu\text{g}/100 \text{ cm}^2$  value for release of equipment and other items to other facilities for beryllium work. Adoption of this value also maintains a consistency with the housekeeping requirements for operational beryllium areas, which will simplify implementation by DOE facilities.

Other issues. One commenter (Ex. 51) recommended that the rule specify that an industrial hygienist should determine the number and location of swipe samples. DOE views the determination of the number and location of swipe samples to be part of the hazard assessment, which must be managed by a qualified individual such as a CIH (see discussion for section 850.21).

Two commenters (Exs. 49, 50) were concerned with dermal exposures to beryllium. DOE agrees that there is a potential health hazard associated with dermal exposure to beryllium, and has imposed requirements under sections 850.29 and 850.37 to protect workers handling beryllium. The hazards associated with dermal exposures also are dealt with in the DOE facilities' health and safety programs under DOE Order 440.1A or, analogous Orders or standards cited in responsible employers' contract with DOE.

#### **Section 850.32—Waste Disposal**

Section 850.32 (proposed as section 850.31) establishes the waste disposal provisions of the CBDPP. Like many of the provisions of the rule (e.g., regulated areas, protective clothing and equipment, and housekeeping), the waste disposal provisions are designed to minimize the spread of beryllium contamination throughout the facility or beyond the sites boundaries.

DOE believes that the most effective way to control the spread of contamination resulting from waste disposal activities is to prevent or minimize the generation of beryllium waste. Accordingly, section 850.32(a) of the final rule requires responsible employers to employ waste minimization principles in conducting beryllium activities. Good housekeeping practices, required by section 850.30, aid in this effort by continually removing beryllium dust accumulations from work surfaces, thereby reducing the level of contamination of workplace equipment. The performance of hazard analyses on operations with the potential to generate wastes, as required by section 850.21, can help responsible employers identify potential sources of wastes and evaluate possible controls that could be implemented to prevent or reduce waste generation. Other waste minimization practices, such as minimizing the equipment and material that is exposed to beryllium contamination, will also assist in reducing the amount of material that must be disposed of as beryllium or beryllium-contaminated waste, thus reducing the potential beryllium exposure hazards.

Section 850.32(b) of the final rule requires responsible employers to dispose of beryllium-containing waste, and beryllium-contaminated equipment and other items that are disposed of as waste, in sealed impermeable bags, containers, or enclosures that are labeled in accordance with section 850.38. Enclosure can be any practical mechanism for sealing, such as wrapping in plastic. DOE believes these

waste disposal provisions are necessary to prevent the re-suspension of beryllium contamination into the workplace atmosphere. Warning labels are necessary to ensure that workers are aware that bags, containers, or enclosures contain beryllium so that they can take appropriate precautions. Furthermore, responsible employers must comply with applicable Federal, state, and local regulations governing the management, transportation, and disposal of waste that contain beryllium.

DOE received two comments regarding the waste disposal provisions of the NOPR. One commenter (Ex. 31) applauded DOE for including waste minimization principles as a control measure for reducing beryllium exposures. This commenter suggested that DOE consider developing a non-mandatory appendix to the rule or stand-alone guidance to illustrate waste minimization principles and provide ideas for workers and employers. DOE recognizes the utility of non-mandatory guidance in assisting responsible employers in implementing certain mandatory requirements of the CBDPP. DOE notes, however, that the U.S. Environmental Protection Agency and other Federal agencies have already developed a wide variety of guidance materials addressing waste management, waste minimization, and pollution prevention principles and practices. Not only are these guides readily available to the DOE community, but many DOE sites have used these guides to develop their own hazardous waste management plans. For this reason, DOE believes that the development of an additional guidance document to address waste minimization principles for the final CBDPP rule is not necessary. DOE is developing an implementation guide for the CBDPP rule that will provide general guidance for disposal of beryllium waste.

The other commenter (Ex. 18) suggested that the waste disposal provisions should address the declassification of beryllium parts that are classified for national security purposes at certain DOE sites. This section of the final rule requires responsible employers to control the generation of beryllium-containing waste, and beryllium-contaminated equipment and other items that are disposed of as waste and to dispose of this equipment and other items in a safe manner. DOE does not intend for these provisions to alter or affect the classification of beryllium-contaminated equipment and other items, nor to supersede the applicable requirements

for protection of such equipment and items. Accordingly, beryllium-contaminated materials that are classified must be handled in accordance with the governing national security regulations, standards, and policies. Responsible employers also must dispose of such materials in accordance with the provisions of this rule.

#### **Section 850.33—Beryllium Emergencies**

Section 850.33 (proposed as section 850.32) establishes the beryllium-related emergency provisions of the CBDPP. Such provisions are particularly important in light of the possibility, suggested by several commenters, that a single, high-level beryllium exposure may have been the cause of CBD occurring among several workers thought to have had no exposure or only incidental, low-level exposures to beryllium.

Proposed section 850.32 would have established broad performance-based provisions requiring responsible employers to develop procedures for responding to and alerting workers to beryllium emergencies, to ensure the availability and use of appropriate protective equipment during related cleanup operations, and to provide emergency response workers with appropriate training on proper response procedures.

Two commenters (Exs. 11, 31) responded to the proposed beryllium emergencies section, and both requested that DOE provide additional guidance regarding beryllium emergency procedures, training, and personal protective equipment requirements. One commenter (Ex. 31) suggested that this guidance was needed to ensure a consistent and coordinated response to beryllium emergencies in cases in which workers from different employers respond to the same event. Both commenters suggested that DOE consider incorporating elements of the emergency response provisions of OSHA's Hazardous Waste Operations and Emergency Response standard (29 CFR 1910.120) in the CBDPP rule.

DOE agrees with the commenters, and notes that the beryllium emergencies provisions of the NOPR were not intended to supersede the applicable provisions of 29 CFR 1910.120. Accordingly, to avoid confusion and duplicative efforts and to ensure consistent and coordinated responses to beryllium emergencies at DOE facilities, DOE has revised the beryllium emergencies section (renumbered section 850.33 in the final rule) to require responsible employers to comply with 29 CFR 1910.120(l) for

emergency response activities related to hazardous waste cleanup operations, and 29 CFR 1910.120(q) for emergency response activities related to all other operations. Also, DOE will provide general guidance on preparing for, and responding to, emergencies involving beryllium in the DOE implementation guide for this rule.

#### Section 850.34—Medical Surveillance

Section 850.34 (proposed as section 850.33) establishes the medical surveillance provisions of the CBDPP. These provisions are aimed at: (1) Identifying workers at higher risk of adverse health effects from exposure to beryllium; (2) preventing beryllium-induced disease by linking health outcomes to beryllium tasks; and (3) making possible the early treatment of beryllium-induced disease.

Several changes have been made to the medical surveillance provisions as proposed. These changes include enlarging the scope of the covered population to include former beryllium workers who are still employed at DOE facilities in non-beryllium work; adding the term “beryllium-associated worker,” which includes all current workers who have or had the potential for exposure to beryllium; adding a multiple and alternate physician review process; deleting the requirement that exposure be at or above the action level before initiating medical surveillance; and deleting the requirement for Office of Environment, Safety and Health review of the written medical surveillance program. In addition, DOE has made editorial changes to clarify various provisions.

The medical surveillance program is designed to ensure the prompt identification, and makes possible the proper treatment, of workers who become sensitized to beryllium or develop CBD. In addition to determining the incidence of CBD in the workforce, the medical surveillance program fulfills a critical information development function, including identifying the risk factors associated with the development of CBD and beryllium sensitization. This rule requires that medical surveillance be given to workers who are at the greatest risk from continued exposure. This determination should be made on the basis of the air monitoring results, the SOMD's recommendation, and any other relevant information the responsible employer may possess, such as past medical or air monitoring records, workers' job tenure, etc.

DOE realizes that some workers may elect not to participate in the medical surveillance program because they

believe that a diagnosis of CBD or beryllium sensitization could have a negative impact on future employment opportunities or on their health insurance. In light of this concern and DOE's desire to maximize worker participation in the medical surveillance program, DOE in the NOPR requested interested parties to comment on the feasibility and utility of including anonymous testing as a provision in the final rule. In requesting public comment, DOE noted two concerns it had regarding the use of anonymous testing; specifically, concern about DOE's inability to correlate collected exposure data to health outcomes for workers choosing anonymous testing, and concern about the effect of anonymous testing on DOE's ability to conduct follow-up tests to confirm positive Be-LPT results.

Eight commenters (Exs. 4, 16, 17, 23, 26, 28, 30, 31) responded to DOE's request for information regarding anonymous testing. Most commenters stated that anonymous testing would not provide significant additional benefits or protection for workers. In addition, all of the commenters shared DOE's concerns regarding the resulting inability to correlate collected exposure data to health outcomes, and the difficulty of tracking employees for follow-up testing to confirm positive results. The commenters believed that these two drawbacks overshadow any potential increase in worker participation.

One commenter (Ex. 17) expressed concern that the use of anonymous testing would limit the employer's ability to provide support to workers receiving medical surveillance. This commenter noted that ongoing support and reassurance is essential for those workers with positive or inconclusive test results. Three commenters (Exs. 16, 23, 26) stated that medical surveillance should be used to determine workplace exposures and evaluate the effectiveness of workplace controls. These commenters believe that anonymous testing would hamper this effort by preventing responsible employers from identifying specific jobs or tasks that lead to beryllium-related health effects.

For reasons stated in the NOPR and expressed by all eight commenters, DOE has decided against the use of anonymous testing. However, DOE has taken steps in the final rule to protect the privacy of beryllium-associated workers, e.g., by requiring the use of unique identifiers (see discussion of section 850.39). DOE cannot responsibly accomplish the tasks of ameliorating the effects of exposure to beryllium and developing needed data on the cause

and development of CBD through anonymous testing. DOE also believes that offering anonymous testing as a supplement to identified testing would discourage workers from participating in identified testing. Accordingly, provisions for anonymous testing are not included in the final beryllium rule.

Section 850.34(a)(1) requires responsible employers to establish and implement a medical surveillance program for beryllium-associated workers. DOE adheres to its view that participation in the medical surveillance program should not be mandatory for workers. The responsible employer's obligation is to offer to provide the medical tests and procedures as required. DOE expects that where worker confidence in the medical program exists, refusal to participate will be minimal.

The term “beryllium-associated worker” is used in the final rule where DOE has determined that coverage of provisions should not be limited to current workers regularly employed in DOE beryllium activities. Use of the term “beryllium-associated worker” will increase the population eligible to receive medical surveillance by including current workers with past beryllium exposures or potential for exposures.

Numerous commenters (Exs. 2, 3, 4, 14, 16, 17, 28, 30, 29, 31) made recommendations regarding the level of employee exposure that should trigger worker participation in the medical surveillance program. Two of these commenters (Exs. 3, 4) objected to offering medical surveillance to all workers potentially exposed to beryllium. However, their reasons for not wanting to include all potentially exposed workers differed. One commenter (Ex. 3) stated that placing all potentially exposed employees in the medical surveillance program would be inconsistent with the permissible exposure limit. The other commenter (Ex. 4) was concerned with the costs associated with such a strategy, and the potential for causing worker anxiety from false-positive Be-LPT test results for workers with limited exposure potential. While these commenters agreed that some level of worker beryllium exposure should trigger the medical surveillance program, neither provided recommendations for an appropriate trigger level.

One commenter (Ex. 16) suggested that DOE use a graded approach to the medical surveillance program which would include current beryllium workers and other workers with exposures or potential exposures at or above the action level. DOE has

determined that a graded approach linked to exposure at or above the action level would not ensure the necessary surveillance of all DOE and contractor workers who may have had exposure to beryllium, whether current or past.

Several commenters (Exs. 2, 14, 16, 17, 28, 29, 30, 31) favored the inclusion of all potentially exposed workers in the medical surveillance program regardless of the measured exposure level. These commenters argued that medical surveillance should not be limited to workers exposed to levels of beryllium at or above the action level, but rather should include all workers with the potential for any beryllium exposure. Three of these commenters stated that current scientific evidence does not indicate a "safe" level of beryllium exposure, and that CBD has been identified in individuals thought to have only low or incidental exposure to beryllium. Their concern was that restricting medical surveillance to "beryllium workers," as defined in proposed section 850.3, would exclude such workers, who in their view are also at risk of contracting CBD. In addition, two of the commenters (Exs. 28, 30) noted that allowing workers exposed at any level to participate in the medical surveillance program would act as an incentive for employers to minimize the number of individuals who work in beryllium areas.

Similarly, three commenters (Exs. 28, 29, 31) argued that current workers with past beryllium exposures should be offered the opportunity to participate in the medical surveillance program. One commenter (Ex. 31) noted that, based on the proposed definition of "beryllium worker," medical surveillance would not be made available to current workers with past beryllium exposure unless they were covered under the medical removal provisions of proposed section 850.34. Another commenter (Ex. 15) suggested that all employees at DOE facilities, even those with no exposure to beryllium, should be given the option of participating in the medical surveillance program.

Several commenters (Exs. 2, 16, 28, 31, 19) raised the issue of medical surveillance for former workers with past beryllium exposures who no longer work at a DOE facility. The commenters stated that former DOE workers should also be provided the opportunity to participate in medical monitoring. They acknowledged DOE's proposed establishment of a separate, directly funded program that offers medical examinations to former workers at risk of developing CBD. However, two of the commenters (Exs. 16, 31) argued that this program should be made available

to former workers at the same time as the program for current workers. Another commenter argued that maintaining two separate databases and programs was not practical.

DOE has revised the final rule to require responsible employers to provide medical surveillance for all beryllium-associated workers. DOE based this revision on the beryllium cases suggesting that low and even incidental exposure to beryllium can lead to sensitization or beryllium disease. This approach will ensure the early identification of workers at risk of health effects from exposure to beryllium, provide the greatest protection of worker health, and provide a more complete documentation of beryllium exposures. Beryllium-associated workers eligible for medical surveillance include any current worker who is exposed or was exposed or potentially exposed to airborne concentrations of beryllium at a DOE facility. Thus medical surveillance will be available to a beryllium worker (as defined in section 850.3), a current worker whose work history shows that the worker may have been exposed to airborne concentrations of beryllium at DOE facilities, a current worker who exhibits signs and symptoms of beryllium exposure, and a worker who is receiving medical removal protection benefits.

Section 850.34(a)(2) requires responsible employers to designate a Site Occupational Medical Director (SOMD) who will be responsible for administering the medical surveillance program. One commenter (Ex. 18) stated that a panel comprised of individuals representing management, labor, the public, and the local medical community should select the SOMD. DOE has not adopted this recommendation because DOE believes that the responsible employer must have ultimate responsibility for ensuring compliance with this requirement.

A number of commenters (Exs. 12, 14, 20, 23) were concerned about the quality of health care for workers with CBD and, more specifically, whether or not workers would have a choice of physicians. One commenter (Ex. 20) pointed out that OSHA no longer restricts the performance of medical evaluations to licensed physicians because this requirement is too prescriptive and fails to recognize the realities of today's health care system. This commenter suggested adding a provision to include other licensed health care professionals among those who may perform medical evaluations.

DOE agrees with this commenter and has revised section 850.34(a)(3) of the

final rule to require responsible employers to ensure that all medical evaluations and procedures are performed by or under the supervision of a licensed physician who is familiar with the health effects of beryllium. Although a licensed physician is the appropriate person to supervise and evaluate a medical evaluation, certain required elements of the evaluation may be performed by another, appropriately qualified person under the supervision of the physician. The licensed physician is required to be familiar with the health effects of beryllium. DOE expects that the medical evaluations and procedures required to diagnose CBD will be performed or validated by a specialist in pulmonary medicine, occupational medicine, or other physician with specialized equipment and examination protocols required to definitively differentiate between CBD and other lung diseases. DOE believes that this is necessary due to the unusual nature of CBD and the fact that not all physicians are familiar with the evaluation of beryllium-associated patients.

Three commenters (Exs. 15, 18, 22) expressed concern about certain language in the NPR preamble that they interpreted to mean that workers would be limited to an evaluation performed by an employer's physician. One commenter (Ex. 22) suggested that DOE adopt OSHA's Lead Standard as a model for selecting physicians. DOE never intended to limit an employee's choice of physicians. To clarify this point, DOE has included in section 850.34, paragraphs (c) and (d), provisions for a multiple physician and alternate physician review. These provisions are explained in the discussion that follows.

DOE views medical surveillance as a primary tool for determining the extent of CBD risk within the worker population. Therefore, section 850.34(a)(4) requires responsible employers to maintain and give to the SOMD a list of beryllium-associated workers who may be eligible for medical surveillance. The list must be based on hazard assessments, exposure records, and any other information that will identify beryllium-associated workers (section 850.34(a)(4)(i)). In addition, section 850.34(a)(4)(ii) requires responsible employers to regularly update the list based on the information from the periodic evaluations performed pursuant to paragraph (b)(2) of this section.

One commenter (Ex. 16) questioned why DOE proposed to give the SOMD the task of identifying working conditions that contribute to the risk of CBD and determining the need for

additional exposure controls. This commenter believed that this task should be performed by an industrial hygienist. Similarly, another commenter (Ex. 23) stated that the SOMD should not be responsible for performing data analysis to determine which workers should be included in the medical surveillance program, or for maintaining the list of beryllium workers at a site. The commenter argued that both of these tasks are management functions that should be carried out by the responsible employer based on technical guidance provided by the industrial hygiene department and the SOMD. DOE agrees with both of these commenters. The responsible employer, not the SOMD, should have the function of identifying working conditions and evaluating the need for workplace controls. Consequently, DOE has revised the final rule to require that responsible employers identify beryllium-associated workers. However, medical judgments that are requisite to management decisions are the SOMD's responsibility.

Section 850.34(a)(5) requires the responsible employer to provide the SOMD with the information needed to operate and administer the medical surveillance program. This information includes, but is not limited to, the baseline beryllium inventory, hazard assessment results, and exposure monitoring data, as well as information regarding the identity and nature of activities or operations on the site that are covered under the CBDPP, the related duties of beryllium workers, and the types of personal protective equipment employed in the performance of these duties.

Section 850.34(a)(6) requires the responsible employer to provide the SOMD and the examining physician with (1) A copy of this rule and its preamble; (2) a description of the workers' duties as they pertain to beryllium exposure; (3) records of the workers' beryllium exposure; and (4) a description of personal protective and respiratory protective equipment in current or anticipated use. DOE believes that this information is necessary to ensure that the physician can make informed decisions regarding the required content of the medical evaluation and the subsequent development of recommendations related to each beryllium-associated worker.

Several commenters (Ex. 8, 17, 18, 19) suggested including provisions for providing beryllium education and training programs to physicians and other health care providers in the rule. DOE has not adopted this suggestion,

because it would expand the scope of the rule.

Section 850.34(b) requires responsible employers to provide, without cost to beryllium-associated workers, all medical evaluations and procedures performed to comply with these regulations. This section also requires that all evaluations and procedures be performed at a time and place that are convenient for the worker. This provision is consistent with similar provisions in OSHA's expanded health standards. This section also requires responsible employers to provide the SOMD with a list of beryllium-associated workers who may be eligible for protective measures under the rule.

Section 850.34(b)(1) requires responsible employers to provide a baseline medical evaluation to beryllium-associated workers. The purpose of the baseline medical evaluation is to: (1) Establish the current health status of the worker and determine whether it is appropriate to assign the worker to jobs with beryllium exposure; (2) initially determine what level of medical surveillance the responsible employer must provide to the worker; and (3) establish essential baseline data for the worker which is used to assess subsequent health changes attributable to beryllium exposure.

DOE received a number of comments regarding baseline medical evaluations and medical testing. One commenter (Ex. 25) requested clarification as to the differences between pre-placement exams, as specified in DOE Notice 440.1, "Interim Chronic Beryllium Disease Prevention Program," and the baseline exams specified in the NOPR. The final rule will supersede DOE Notice 440.1, and the interim medical surveillance program requirements will be replaced with those of the final rule. The final rule does not refer to pre-placement exams. Another commenter (Ex. 23) recommended that the meaning of spirometry be clarified to ensure consistency. DOE agrees and has specified the measurement of forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV<sub>1</sub>) in section 850.34(b)(1)(v) of the final rule.

A commenter (Ex. 19) questioned the value of baseline pulmonary function tests and x-rays. This commenter suggested that baseline studies cannot be used to determine which health changes are related to work hazards and which are related to other activities or disease processes. This commenter favored the approach of following patients clinically and using Be-LPT and other studies, to augment clinical impressions. Early identification of

CBD, this commenter states, might have no positive effect on the course of the disease.

DOE disagrees with this comment. Early identification and intervention are important for identifying workers at higher risk of exposure to beryllium, and for preventing and minimizing the effects of beryllium-induced disease. DOE's position is supported by a commenter (Ex. 29) who stated that while spirometry and X-rays may not be predictive, X-rays have in some instances identified CBD cases in individuals who had a normal Be-LPT. This commenter stated that these cases are likely to be missed if spirometry and X-rays are not required, and also recommended X-ray screening for Be-LPT negative individuals with persistent chest problems. Another commenter (Ex. 19) emphasized the benefits of good data collection to determine if early removal of beryllium sensitized workers prevents the progression to CBD.

One commenter (Ex. 33) suggested that, if available, recent chest X-rays be utilized for the baseline medical evaluation to reduce X-ray exposure. DOE agrees that if previous chest X-rays have been conducted, for a baseline beryllium evaluation, additional X-rays should not be used unless specified by a physician. However, to ensure that the chest X-ray correlates with other diagnostic and historical information, only those X-rays taken for the purpose of a baseline beryllium evaluation or equivalent evaluation should be used to establish a baseline.

Section 850.34(b)(1)(vi) requires responsible employers to provide a Be-LPT as part of the baseline evaluation. The Be-LPT is the only available laboratory test for determining individual immune response to beryllium in vitro. Its use in a surveillance program will permit detection of beryllium-related health effects at a pre-clinical stage. A positive Be-LPT would indicate the need for further evaluation to determine the presence of CBD. The use of the Be-LPT as an evaluation tool provides an early opportunity for diagnosis and treatment of CBD.

Finally, section 850.34(b)(1)(vii) authorizes the examining physician to make available to the worker any additional tests deemed medically necessary. DOE believes that it is important that the examining physician have such discretion because individuals may exhibit different responses to beryllium. In this regard, one commenter (Ex. 16) expressed concern regarding proposed section 850.33(i), which provided that workers



would be referred for further diagnostic evaluation if there were two or more positive Be-LPTs. The commenter interpreted this provision as a mandatory requirement. DOE's intent is that workers have the opportunity for additional testing if recommended by the examining physician. A worker is not required by the rule to undergo additional medical evaluation and treatment.

One commenter (Ex. 29) recommended clinical referral for additional diagnostic tests after one positive Be-LPT, instead of two or more as proposed by DOE. DOE believes that the examining physician is in the best position to determine which additional tests, if any, would be useful in evaluating the health of an individual worker. Therefore, DOE has removed the requirement for follow-up testing based on two or more positive Be-LPT tests, relying instead on the examining physician's discretion under section 850.34(b)(1)(vii) to order follow-up tests when appropriate.

Section 850.34(b)(2) requires responsible employers to provide medical evaluations to beryllium workers annually, and to other beryllium-associated workers every 3 years. Responsible employers must provide the periodic medical evaluation elements described in section 850.34(b)(2)(i) to detect, at an early stage, any pathological changes that could lead to CBD or be aggravated by beryllium exposure. By detecting abnormalities early, workers may be medically removed to prevent further beryllium exposure.

Section 850.34(b)(2)(ii) requires responsible employers to provide to beryllium-associated workers a chest radiograph (X-ray) every 5 years. DOE includes this requirement for periodic X-rays because X-rays have been shown to be effective in the early detection of beryllium-related health effects (Ex. 29).

Following an emergency in which a worker, who is not already participating in the beryllium medical surveillance program, is exposed to an elevated amount of beryllium, the responsible employer is required by section 850.34(b)(3) to provide a medical evaluation as soon as possible.

A commenter (Ex. 23) suggested that a standard respiratory symptom questionnaire, medical work history form, and physical examination form be used at all DOE sites for consistency. DOE agrees that such standardized forms may help ensure consistency across the DOE complex, but is concerned that mandating the use of standardized forms may limit the discretion of the SOMD in determining

the appropriate medical surveillance for each individual. Accordingly, DOE has decided to include appropriate standardized forms as non-mandatory guidance in an implementation guide to accompany the final rule. Another commenter (Ex. 29) was concerned that the NOPR required a respiratory symptom questionnaire for periodic medical evaluations, but not for the baseline evaluation. DOE acknowledges this oversight and has included the respiratory symptom questionnaire as part of both the periodic and baseline medical evaluations in sections 850.34(b)(1)(ii) and (b)(2)(I)(B) of the final rule.

Section 850.34(c) requires responsible employers to establish a multiple physician review process for affected beryllium-associated workers. DOE has identified three benefits of providing a multiple physician review process: (1) to strengthen and broaden the bases for medical decisions made pursuant to this rule when a beryllium-associated worker questions the findings, recommendations, or determinations of an initial physician retained by the responsible employer; (2) to increase beryllium-associated workers' confidence in the soundness of medical findings, recommendations and determinations made under this rule; and (3) to increase beryllium-associated worker's acceptance of, and participation, in the medical surveillance program.

Given the shortage of trained and experienced occupational physicians, it is possible that some physicians performing examinations or consultations under the beryllium rule will misdiagnose CBD. However, rather than requiring multiple medical opinions in all cases, which would be expensive and potentially wasteful, DOE is providing to beryllium-associated workers an opportunity to obtain an independent review of the findings, determinations or recommendations of the physician selected by the responsible employer. Over time, this independent review is likely to show either that a perceived low level of confidence in the physician retained by the responsible employer is unwarranted, or that the responsible employer should improve the quality of the medical surveillance being provided. In either case, the multiple physician review process will have served a beneficial purpose.

In section 850.34(c)(1), a beryllium-associated worker may designate a second physician to review any findings, determinations, or recommendations of the physician chosen by the responsible employer,

and to conduct such examinations, consultations, and laboratory tests as the second physician may deem necessary to facilitate this review. The responsible employer's obligation to provide information to the examining physician extends to other physicians involved in the multiple physician review or alternate physician review process so that all of the physicians involved will have an equal opportunity to assess the beryllium-associated worker's health status.

Section 850.34(c)(2) requires that after an initial physician conducts an examination or consultation, the responsible employer must promptly notify the worker of his or her right to seek a second medical opinion. This notification must be in writing.

Section 850.34(c)(3) requires that after the worker is notified of this right, the responsible employer may condition its participation in, and payment for, multiple physician review upon the worker, within 15 days after receipt of the notification or the initial physician's written opinion, whichever is later, both (1) informing the responsible employer that the worker intends to seek a second medical opinion, and (2) initiating steps to make an appointment with a second physician.

The rule contains no limitation on a beryllium-associated worker's choice of a second physician, except the requirement in section 850.34(a)(3) that the second physician must be a licensed physician who is familiar with the health effects of beryllium.

If the second physician's findings, determinations, and recommendations are the same as those of the initial physician, then the multiple physician review process comes to an end. However, as provided in section 850.34(c)(4), if the opinions of the two physicians are in conflict, then the responsible employer and the beryllium-associated worker must undertake to encourage the two physicians to resolve any disagreement. DOE expects that the two physicians will communicate with each other to resolve their differences, but the rule requires the responsible employer and worker to encourage such a resolution. In most cases, this professional interaction should resolve any differences of opinion.

In cases where differences remain, these differences of opinion are likely to be genuine and substantial. If the first two physicians are unable to resolve expeditiously any differences of opinion with respect to a beryllium-associated worker, then it is necessary for a third qualified physician to resolve the dispute. It is critical that this third



physician has the confidence of those concerned and is competent to resolve the dispute. Consequently, section 850.34(c)(5) requires that the responsible employer and the beryllium-associated worker together, through their respective physicians, must designate the third physician.

Under section 850.34(c)(5) the third physician will have a full opportunity to review the findings, determinations, and recommendations of the two prior physicians, and to conduct such examinations, consultations and laboratory tests as the third physician deems necessary. DOE expects that the third physician will consult with the other two physicians. The third physician should provide a written medical opinion to the SOMD which will be used to resolve the disagreement between the other two physicians. Section 850.34(c)(6) requires the SOMD to act in a manner consistent with the findings, determinations, and recommendations of the third physician, unless the SOMD and the beryllium-associated worker reach an agreement that is otherwise consistent with the recommendations of at least one of the other two physicians.

Since the multiple physician review process will be a means by which medical surveillance is provided to a beryllium-associated worker, responsible employers must bear the expense of this process when it is used. Based on OSHA's practice and experience with multiple physician review in its health standards, DOE does not expect the costs of this process to be burdensome to the responsible employers. If responsible employers establish and administer medical surveillance programs that engender worker confidence, workers should have little or no need to seek second medical opinions.

The requirement for multiple physician review is not intended to preclude responsible employers from establishing and implementing alternate medical protocols. DOE has included language in section 850.34(d) to provide for alternate physician determination. Under that section, the responsible employer and beryllium-associated worker, or the worker's designated representative, may agree upon the use of any expeditious alternate physician determination process, instead of the multiple physician review process. The only condition is that the alternate process be no less protective of the worker's health than the multiple review process. For example, a jointly agreed upon physician might be used in the first instance without recourse to other physicians. DOE encourages

responsible employers and workers to adopt medical determination procedures in which all parties have trust and confidence.

Section 850.34(e)(1) requires the SOMD to provide to responsible employers, within two weeks after receipt of results, a written and signed medical opinion after each medical evaluation of a beryllium-associated worker. The purpose of requiring the SOMD to give the responsible employer a written opinion is to inform the responsible employer of the medical basis for determining the job placement of the examined worker. This written medical opinion, as described in section 850.34(e)(i-iii), must contain any diagnosis of the worker's condition related to occupational exposure to beryllium; any other detected medical conditions relevant to further beryllium exposure; any recommended restrictions on the worker's exposure to beryllium or on the use of protective clothing or equipment; and a statement indicating that the SOMD or the examining physician has provided to the worker the results of the test, the medical evaluation, including all tests results and any medical condition related to beryllium exposure that requires further evaluation or treatment.

Section 850.34(e)(2) requires the SOMD to withhold from the responsible employer, orally or in the written medical opinion, specific findings or diagnoses not related to occupational exposure to beryllium.

Two commenters (Ex. 23, 28) expressed concern regarding proposed section 850.33(j)(2), which stipulated that the physician's written medical reports be delivered within 15 calendar days after the completion of a medical evaluation. The commenters noted that Be-LPT tests are time-consuming and may exceed the 15-day time frame, and suggested that the 15-day period should begin after receipt of the test results. DOE agrees, and has revised section 850.34(f) to require the SOMD to give beryllium-associated workers a written medical opinion containing the results of all medical tests or procedures, an explanation of any abnormal findings, and any recommendation that the worker be referred for additional testing within 10 working days after the SOMD's receipt of test results.

In section 850.34(f)(2), upon request by the beryllium-associated worker, the responsible employer is required to provide the worker with a copy of the information the responsible employer is required to provide to the examining physician.

Section 850.34(g) requires the responsible employer to report on the

applicable OSHA reporting form (currently OSHA Form No. 200) beryllium sensitization, CBD, or any other abnormal condition or disorder of workers caused or aggravated by occupational exposure to beryllium. Although not included in the proposed rule, this provision reflects current practices and does not impose a new burden on employers. Reporting abnormal conditions and disorders that are occupationally caused and beryllium-related will contribute to the development of occupational health statistics that eventually may lead to improved disease prevention and medical intervention for beryllium-associated workers. It will also provide DOE with information and data helpful in assessing the effectiveness of the CBDPP rule and in considering what, if any, modification should be made to the rule in the future.

Section 850.34(h)(1) requires responsible employers to establish a routine and systematic analysis of medical, job, and exposure data. The purpose of this requirement is to collect and analyze information so that the prevalence of disease can be accurately described and conclusions reached on causes or risk factors for the disease. This data analysis is an effective means of measuring performance under the CBDPP, and for correcting and improving the CBDPP. Section 850.34(h)(2) requires the responsible employer to use the results of these analyses to determine which workers should be offered medical surveillance and the need for additional exposure controls.

#### Section 850.35—Medical Removal

Section 850.35 (proposed as section 850.34) requires responsible employers to establish medical removal protection (MRP) and medical removal protection benefits (MRPB) as part of the CBDPP.

Medical surveillance can only be effective in detecting and preventing disease if beryllium-associated workers: (1) voluntarily seek medical attention when they feel ill; (2) refrain from efforts to conceal their true health status; and (3) fully cooperate with examining physicians to facilitate accurate medical diagnoses and effective treatment. This sort of worker participation and cooperation cannot be evoked by coercion; it will occur only where no major disincentives to meaningful worker participation exist. Without such participation, it would be much more difficult, if not impossible, to adequately monitor workers' health and to identify workers who need temporary or permanent medical removal.

MRP is a logical result of medical surveillance. Without MRP, responsible employers would be free to maintain high-risk workers in their current jobs, which would not be sufficiently protective of their health. Alternatively, responsible employers could choose to terminate workers or transfer them from higher-paying, beryllium-exposed jobs to lower-paying, non-beryllium jobs. This might be protective, but it would impair the workers' standards of living. In either case, the effectiveness and integrity of the medical surveillance program would be compromised.

With MRP, beryllium-associated workers are assured of being removed to jobs where exposure to beryllium is low if such removal is determined to be necessary to protect their health. With MRPB, workers are assured that, if they fully participate in medical surveillance and if the results of medical surveillance require removal from their beryllium exposed jobs, their normal earnings and job status will be protected for a pre-determined period.

Thirty-two commenters (Ex. 12 is a form letter submitted by 16 beryllium workers) commented on the proposed MRP and MRPB provisions in the NOPR. They addressed a wide variety of issues and frequently expressed opposing viewpoints. For instance, two commenters (Exs. 16, 26) stated that the proposed MRP provisions went too far (e.g., two years of protection is too long; accepted applicants should not be included under the provisions), while others (Exs. 3, 8, 12, 14, 17, 18, 22, 24, 28, 29, 31) stated that the provisions did not go far enough (e.g., two years of protection is not long enough; one follow-up examination is not enough; the training costs limits are too restrictive; the rule should provide provisions for multiple physician reviews). Several commenters (Exs. 20, 22, 31) argued against the voluntary nature of the proposed provisions, stating that it would be unethical to allow a worker with CBD to continue to be exposed to beryllium, and suggesting that workers could be wrongfully pressured into staying in beryllium-related jobs. Other commenters (Exs. 29, 30) agreed with DOE's proposal to require employee consent, and requested that DOE provide additional guidance to help workers make more informed decisions regarding their medical removal. DOE has decided, consistent with some of the comments, to use the provisions of OSHA's expanded health standards as the basis for the MRP and MRPB provisions of the final rule. DOE has modeled the MRP and MRPB provisions of this final rule upon similar provisions in OSHA's

Cadmium, Lead and Benzene standards, 29 CFR 1910.27, 1910.1025 and 1910.1028, respectively. DOE's rationale for each provision of section 850.35 in the final rule is discussed below.

Section 850.35(a) requires responsible employers to offer a beryllium-associated worker medical removal from exposure to beryllium on each occasion that the SOMD determines in a written medical opinion that medical removal is required. The SOMD's determination must be based upon one or more positive Be-LPT results, CBD diagnosis, an examining physician's recommendation, or any other signs or symptoms the SOMD deems medically sufficient to show that the worker has a medical condition that places the worker at increased risk of material impairment to health from further exposure to beryllium.

Section 850.35(a)(1) deals with temporary removal. It requires the responsible employer to offer temporary medical removal to a beryllium-associated worker whenever the SOMD determines in a written medical opinion that the worker should be removed pending a final medical determination on the worker's health. The responsible employer must offer to temporarily remove a worker regardless of whether a job is available into which the removed worker may be transferred. If no such job is available, the responsible employer must pay medical removal protection benefits to the worker for up to one year. Section 850.35(a)(1) (iii) and (iv) require that for each time a beryllium-associated worker is temporarily removed, the responsible employer must maintain the worker's total normal earnings, seniority and other employment rights as if the worker were not removed, either by providing an appropriate alternative job or by paying MRPB, for one year.

If a final medical determination is made that the worker does not have a medical condition which places the worker at increased risk of material impairment to health from exposure to beryllium, the temporary MRP must be lifted so that the affected worker may return to his or her normal duties.

Section 850.35(a)(2) requires the responsible employer to offer beryllium-associated workers permanent medical removal whenever the SOMD determines in a written medical opinion that the beryllium-associated worker should be permanently removed from exposure to beryllium. Once a worker is permanently removed, the worker will receive the medical removal protection benefits specified in section 850.35(b) of this rule.

Section 850.35(a)(3) is intended to ensure that beryllium-associated workers are given the information needed to make an informed decision on whether to accept temporary or permanent removal from a job with a potential for beryllium exposure.

Section 850.35(a)(4)(i) prohibits the responsible employer from returning a beryllium-associated worker who has been permanently removed to the worker's former job status, unless the SOMD has determined in a written medical opinion that removal is no longer necessary to protect the worker's health, or the exception in section 850.35(a)(4)(ii) applies. Under section 850.35(a)(4)(ii), if there are special circumstances that make medical removal an inappropriate remedy, or if the SOMD's professional opinion is that continued exposure will not pose an increased risk to the worker's health (e.g., the potential decrements to the worker's lung function are not projected to be any greater if the worker were permitted to continue on the job than they would be if the worker were removed), the SOMD must fully discuss the matter with the worker and, in a written medical determination, may recommend returning the worker to his or her former job status. The purpose of this exception is to provide some flexibility where it is reasonably clear that returning the worker to his or her normal job is unlikely to adversely affect the worker's health. For example, a return to work may be justified if a worker who is not experiencing a decrease in lung function, has been on medical removal for 2 years and is about to retire, and the time that the worker will continue to be occupationally exposed at or above the action level is very limited. If the SOMD recommends return of the worker in such cases, the SOMD may require the responsible employer to provide the worker with additional protection, such as a supplied air respirator operated in a positive pressure mode. In any event, a decision to return the worker should be made only after the SOMD has fully explained the relevant facts and prognoses to the worker.

Section 850.35(b) establishes the MRPB that must be provided to removed workers. DOE believes that the establishment of MRPB is critical to minimize the disability associated with CBD. Removal from exposure and effective job-placement efforts, coupled with early diagnosis and treatment, will increase the likelihood that affected beryllium-associated workers will continue as productive members of the DOE workforce. In addition, MRPB will encourage worker participation in the

medical surveillance program by providing beryllium-associated workers with a reasonable level of assurance that a finding of sensitization or diagnosis of CBD will not lead to the loss of their employment.

Under section 850.35(b)(1), the responsible employer is required to provide up to two years of MRPB to a beryllium-associated worker on each occasion that he or she is medically removed from exposure to beryllium in accordance with this part.

Section 850.35(b)(2) requires the responsible employer to provide the "total normal earnings, seniority, and all other workers rights and benefits" of a removed beryllium-associated worker as if the worker had not been removed. The purpose of this requirement is to ensure that a removed worker does not suffer economic loss due to the removal. Thus, if a removed worker routinely earned overtime pay on the job from which he or she was removed and would have continued to do so during the removal period, then MRPB must include the amount of expected overtime as part of the worker's "total normal earnings." DOE selected 2 years as the maximum period during which the responsible employer is required to pay MRBP to a worker who accepts removal instead of the 18 month protection period established in OSHA's Lead and Cadmium standards. DOE has established a different protection period for beryllium because of the toxicological differences between beryllium and the two metals covered in the OSHA standards. Specifically, the early stages of the health impairments associated with exposure to lead or cadmium will reverse in time with no additional exposure, but beryllium sensitization and CBD will not. The objective of OSHA's 18 month period is to provide workers with sufficient recovery time so that they can return to their job. The objective of DOE's 24 month period, however, is to allow beryllium-associated workers who accept permanent medical removal sufficient time to be retrained and placed in different job. DOE believes that this period should be long enough to enable the majority of removed beryllium-associated workers to be retrained and placed in another job or, for those workers who can be returned to their former job status, to be returned before their MRPB expire.

Under section 850.35(b)(3), if a removed worker files a claim for workers' compensation payments for a beryllium-related disability, the responsible employer must provide MRPB pending disposition of the claim. The responsible employer receives no

credit for the workers' compensation payments received by the worker for treatment related expenses.

In section 850.35(b)(4), the responsible employer's obligation to provide MRPB is reduced by the amount of any compensation the beryllium-associated worker receives from any other source for earnings lost during the period of removal. This provision is necessary to ensure that MRPB does not result in a "windfall" to the worker who collects other compensation, including salary from another job, while the worker is on medical removal from exposure to beryllium.

Section 850.35(b)(5) provides that the requirement that a responsible employer provide MRPB is not intended to expand upon or restrict any rights a worker has or would have had, absent medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

Section 850.35(b)(6) provides that a responsible employer may condition the provision of MRPB upon the beryllium-associated worker's participation in medical surveillance. Thus, although the rule does not require worker participation in medical surveillance, it permits the responsible employer to deny economic protection to workers who are unwilling to participate in medical surveillance. Since the responsible employer must bear the financial burden of medical removal, the employer has a legitimate interest in minimizing the need for medical removal. Unless workers participate in medical surveillance, the responsible employer may not be able to identify workers whose exposure to beryllium should be reduced to avoid the need for medical removal.

In providing the responsible employer the authority to condition provision of MRPB upon a beryllium-associated worker's participation in medical surveillance, DOE does not intend to permit an employer to deny MRPB for insignificant lapses in such participation. The worker's actions should be assessed reasonably, in light of the goal of prevention of disease and the employer's interest in minimizing the need for medical removal.

#### Section 850.36—Medical Consent

Section 850.36 (proposed as section 850.35) establishes the medical consent provisions of the CBDPP. Because worker participation in the medical surveillance program established by this rule is voluntary, this section is necessary to ensure that beryllium-associated workers receive adequate information to make an informed

decision regarding their participation in the program.

Section 850.36(a) requires responsible employers to provide beryllium-associated workers with a summary of the medical surveillance program, the type and purpose of data to be collected, how the data will be maintained, and protections for ensuring the confidentiality of medical records. Responsible employers must provide this information at least one week before any medical evaluation or tests, or when requested by the worker.

Section 850.36(b) requires responsible employers to provide beryllium-associated workers with information on the benefits and risks of the medical tests and examinations offered as part of medical surveillance. This information must be provided at least one week prior to any examination or test. DOE expects responsible employers to make reasonable efforts to help workers understand the material. Accordingly, section 850.36(b) requires responsible employers to give beryllium-associated workers an opportunity to ask questions and receive answers before a medical evaluation is performed.

Section 850.36(c) requires responsible employers to have the SOMD obtain the beryllium-associated worker's signature on the informed consent form found in Appendix A to this part, before medical evaluations or tests are performed.

#### Section 850.37—Training and Counseling

Section 850.37 (proposed as section 850.36) establishes requirements for training and counseling workers regarding exposure to beryllium, and the potential health effects associated with such exposure. This worker training is necessary because the appropriate implementation of the required workplace procedures of the CBDPP ultimately rests upon the front-line workers who will be performing work on, with, or near beryllium or beryllium-contaminated materials. These workers cannot be expected to implement the required CBDPP procedures if they are not aware or fully appreciative of the significance of these procedures.

DOE expects that responsible employers will conduct training in a manner that is easy to understand. Training material should be appropriate in content and vocabulary to the education level, and language background of affected workers. The goal of training is to ensure that all workers, regardless of cultural or educational background, have the knowledge necessary to reduce and minimize their exposure to beryllium.

Section 850.37(a)(1) requires responsible employers to develop and implement a worker training program for beryllium-associated workers and all other individuals who work at a site where beryllium activities are conducted, and ensure their participation in the program. DOE recognizes that OSHA's Hazard Communication standard (29 CFR 1910.1200) already requires that employers provide their workers with training regarding the risks associated with all hazardous materials in the workplace. DOE does not intend that employers would implement separate and redundant training and information programs to comply with both this rule and the Hazard Communication standard. Accordingly, sections 850.37(b)(1) and (2) require responsible employers' CBDPP training and information programs to comply with the Hazard Communication standard as well as address the contents of the CBDPP. Through this provision, DOE intends for responsible employers to integrate their CBDPP training and information efforts into their existing Hazard Communication training program. This will minimize the burden on responsible employers and provide for a consistent approach to worker training and the communication of workplace hazards.

DOE added "contents of the CBDPP" to the training requirements in section 850.37(b) because this information is essential for a worker to understand how to effectively participate in the CBDPP. OSHA's Hazard Communication standard (29 CFR 1910.1200) does not explicitly refer to anything like a CBDPP. In the final rule, DOE has removed specific mention of several subjects (beryllium health risk, exposure reduction, and safe handling of beryllium and medical surveillance) that were specifically identified in the proposed rule. These subjects are adequately covered in the Hazard Communication standard.

One commenter (Ex. 3) recommended detailed training for workers who have had, or are likely to have, exposures to beryllium because their assigned tasks may have involved beryllium. DOE generally agrees with the commenter and in the final rule has used a performance-based approach to identifying the workers to be trained. Section 850.37(b), paragraphs (1) and (2), require detailed training for beryllium-associated workers.

In the NPR (Section V, Request for Information), DOE stated that it was considering including a requirement that responsible employers develop and implement an outreach education

program for family members of beryllium workers. Commenters generally agreed on the need to inform workers' families about beryllium hazards, but had different views about how it should be accomplished. Two commenters (Exs. 16, 26) recommended that an outreach requirement not be included in the rule and, instead, that workers be relied upon to relay beryllium information to their families. Several other commenters (Exs. 17, 28, 30, 31) recommended that DOE include an outreach requirement in the rule, and require employers to provide beryllium information without relying on the workers. After considering all of the comments, DOE has added section 850.37(b)(3), which requires the responsible employer to provide to its workers information about risks to family members. This section relies upon the workers to relay the relevant beryllium hazard information to their families. DOE encourages responsible employers to provide beryllium-associated workers with information about beryllium risks that is readily understandable to family members and others, as well as to the workers.

One commenter (Ex. 4) recommended that the requirement for outreach not be included as part of the rule, but that DOE provide outreach information from a central point in DOE. The commenter felt that this approach would be more efficient than having each responsible employer develop and provide its own outreach information. DOE disagrees with this comment, and is of the view that more effective outreach will be provided if responsible employers include information about beryllium risks to families and others as part of the detailed training provided to beryllium-associated workers and those who use protective clothing and equipment.

One commenter (Ex. 3) recommended general awareness training for workers who are not beryllium-associated workers but who, at some time, may be at risk because they work at a site where beryllium activities are conducted. DOE agrees with this recommendation, and section 850.37(c) requires the responsible employer to provide general awareness training about beryllium hazards and controls to these workers.

Section 850.37(d) requires that the responsible employer provide training to workers prior to initial assignment and at least every two years thereafter to ensure that workers are appropriately prepared to deal with the hazards and risks of working with beryllium. The initial training requirement of this paragraph is important to ensure that workers have the information they need to protect themselves before they are

actually subject to exposure or potential exposure hazards. Periodic training is necessary to reinforce and update initial training, especially with regard to the protective actions workers must take at their current jobs to reduce their potential for exposure to beryllium. DOE has established the frequency of two years as a minimum requirement, rather than the proposed one year.

Section 850.37(e) requires the responsible employer to provide additional training when the employer has reason to believe that a beryllium worker lacks the proficiency, knowledge, or understanding needed to work safely with beryllium. This situation could occur because of changes in workplace operations, controls, or procedures or the availability of new or updated information regarding the health risk associated with exposures to beryllium. Also, a worker's performance may show that the worker has not retained the requisite proficiency. DOE used the retraining requirements of the OSHA scaffold standard (29 CFR 1926.454(c)) as a model for section 850.37(e).

Section 850.37(f) requires the responsible employer to develop and implement a worker counseling program to assist beryllium-sensitized workers and workers diagnosed with CBD. The purpose of the counseling program is to communicate to workers information that may help them make important health- and work-related decisions and perform administrative activities, such as filing workers' compensation claims. This section also requires the responsible employer to communicate information concerning the following topics: the medical surveillance program; medical treatment options; medical, psychological, and career counseling; medical benefits; administrative procedures and worker rights under applicable workers' compensation laws and regulations; work practices aimed at limiting worker exposure to beryllium; and the risk of continued exposure after sensitization.

One commenter (Ex. 23) cautioned that the proposed language dealing with workers' compensation counseling could have been interpreted as imposing obligations that exceed employer obligations under states' workers' compensation statutes. DOE has included in section 850.37(f) the qualifying language "administrative procedures and worker rights" and "under applicable workers' compensation laws and regulations" to make clear that DOE does not intend to establish any new workers' compensation obligations. DOE understands that responsible employers

may develop such counseling programs in consultation with labor organizations representing covered workers, and that employers may wish to advise the workers to consult their own attorneys on these matters.

Another commenter (Ex. 22) recommended that beryllium training be provided by organizations or persons who receive grants from DOE. This commenter asserted that it is inappropriate for DOE contractors, who are responsible employers, to conduct beryllium training because these employers are not sufficiently independent. DOE does not agree with this comment and has not adopted this recommendation. The vast majority of DOE's safety and health training is currently being conducted adequately by responsible employers, and it is common outside of DOE for employers to provide safety and health training to their employees.

One commenter (Ex. 21) recommended that this section be revised to include the adult education principles outlined in Appendix E of OSHA's Hazard Communication standard (29 CFR 1910.1200) because these principles have been effective when applied to training workers. While DOE has not explicitly referenced this advisory Appendix in the final rule, nothing in the rule prohibits its use. Although the Appendix appears to be a good example of the use of adult educational principles that an employer could use to train workers on their hazard communication program, it does not expressly identify or describe these principles. Responsible employers would have to infer the principles from Appendix E and then apply those principles to their beryllium training program. In addition, DOE believes that an explicit reference to this Appendix in the rule would be confusing because this Appendix is not specifically applicable to beryllium training.

#### Section 850.38—Warning Signs and Labels

Section 850.38 (proposed as section 850.37) requires responsible employers to post warning signs and labels to ensure that the presence and dangers associated with beryllium and beryllium-contaminated materials or areas are communicated to workers. Section 850.38(a) requires the posting of warning signs at all entranceways to established regulated areas and that these signs bear the following warning:

DANGER  
BERYLLIUM CAN CAUSE LUNG  
DAMAGE  
CANCER HAZARD  
AUTHORIZED PERSONNEL ONLY

The purpose of these signs is to minimize the number of persons in a regulated area by warning workers prior to entry. The signs alert workers to the fact that they must have the appropriate authorization from their supervisor to enter the regulated area. This is especially important when regulated areas are established on a temporary basis, such as during cleanup operations. In such cases, workers who typically work in or travel through the area may not be aware of the new potential for exposures to beryllium and, thus, may not be appropriately equipped for or aware of the need to protect themselves from potential exposures. Warning signs also serve as a constant reminder to those who work in regulated areas that the potential for exposure to beryllium exists in the area and that appropriate controls must be used.

Sections 850.38(b)(1) requires responsible employers to label with appropriate hazard warnings all containers of beryllium, beryllium compounds, or beryllium-contaminated clothing, equipment, waste, scrap, or debris to ensure that individuals who come in contact with the containers are aware of their contents and the need to implement special handling precautions. Because the effectiveness of the warning labels in achieving these objectives is greatly dependent upon the visibility, accuracy, and understandability of the content of the labels, section 850.38(b)(2) further specifies that labels bear the following information:

DANGER  
CONTAMINATED WITH BERYLLIUM  
DO NOT REMOVE DUST BY BLOWING  
OR SHAKING  
CANCER AND LUNG DISEASE  
HAZARD

Section 850.38(c) clarifies that the warning signs and labels developed to comply with the CBDPP must also comply with the OSHA Hazard Communication standard, 29 CFR 1910.1200. DOE believes this clarification is needed to avoid duplication of effort. In addition, DOE believes that ensuring that the content and format of warning signs and labels comply with the Hazard Communication standard will result in a consistent, recognizable, and comprehensive approach to alerting workers to beryllium's potential to cause disease.

One commenter (Ex. 20) asked if DOE had given consideration to requiring that warning signs and labels be provided in languages other than English or the use of universal symbols

to communicate information. DOE notes that 29 CFR 1910.1200(f)(9) (OSHA's Hazard Communication standard) states that employers with employees who speak other languages may present the information in those other languages, as long as the information is presented in English as well. DOE agrees with this approach. Thus, section 850.38(c) requires that all warning signs and labels comply with 29 CFR 1910.1200.

Another commenter (Ex. 23) noted that the warning signs provisions specified in the NOPR differed slightly from those in DOE Notice 440.1, and suggested that DOE retain the NOPR language in the final rule in lieu of the language in the Interim CBDPP. DOE notes that the warning signs and labels provisions of the NOPR were based on the provisions of the Interim CBDPP, with minor modifications added to clarify the intent of the requirements. DOE has retained these clarifications in section 850.38 of the final rule.

A third commenter (Ex. 9) was concerned that references to cancer and cancer hazards in warning signs and labels may be misleading and deceptive, and, noting that the reference did not represent the opinion of a qualified medical professional, recommended that DOE obtain a "qualified medical opinion" to resolve this issue. DOE believes that the action of the International Agency for Research on Cancer (IARC) and ACGIH in classifying beryllium as a human carcinogen provides sufficient basis for retaining the cancer warning on warning signs and labels for beryllium-contaminated materials. DOE further notes that NIOSH has classified beryllium as a potential occupational carcinogen since 1977.

#### Section 850.39—Recordkeeping and Use of Information

Section 850.39 (proposed as section 850.38) requires responsible employers to establish and effectively manage records that relate to the CBDPP and to periodically submit to the Office of Environment, Safety and Health a registry of beryllium-associated workers.

Section 850.39(a) requires the responsible employer to establish and maintain up-to-date and accurate records of all beryllium inventory information, hazard assessments, exposure measurements, exposure controls, and medical surveillance data. DOE believes that up-to-date and accurate records are essential for effectively implementing the CBDPP, assessing its adequacy, and studying the relationship between workplace conditions and CBD. Some of these records will be needed to implement the

performance feedback provisions in section 850.40.

One commenter (Ex. 31) recommended that the final rule explicitly reference OSHA's regulations at 29 CFR 1910.1200 and CFR 1910.1020. OSHA regulations at 29 CFR 1910.1200 (Hazard Communication) already require employers to keep records of beryllium inventory information, and regulations at 29 CFR 1910.20 (Access to Employee Exposure and Medical Records) already require employers to keep records of beryllium hazard assessments, exposure measurements, and medical surveillance data. DOE has not, however, included in section 850.39 references to these OSHA standards. DOE believes that this rule's requirements for maintaining and transferring CBDPP-related records, while ensuring confidentiality of personal information, are stated in clear and concise wording specifically related to the CBDPP that is preferable to cross-referenced OSHA standards. Furthermore, one commenter's (Ex. 31) primary concern was ensuring that workers have access to the information that relates to their personal exposure and medical status. DOE has addressed this concern in section 850.24(g), by requiring responsible employers to notify affected workers of beryllium monitoring results, and in section 850.34(d)(2), by requiring the SOMD to provide to workers the results of medical tests and procedures.

DOE encourages responsible employers to take advantage of existing recordkeeping systems to minimize the burden of implementing section 850.39. Responsible employers also may find that records that are generated outside the CBDPP may be useful in implementing the CBDPP. Examples are records of beryllium training, personnel demographics, beryllium mission descriptions, and payroll records of projects that can be used to link workers with potential beryllium exposure.

Section 850.39(b) requires Heads of DOE Departmental Elements to designate all record series required to be generated under this rule as federal records and, therefore, subject to all applicable federal records management and access laws.

One commenter (Ex. 18), in commenting on the baseline inventory provisions of the proposed rule, recommended that DOE require full public disclosure of health and safety documents related to past beryllium emissions and exposures. In the final rule, DOE is requiring Heads of DOE Departmental Elements to designate the CBDPP-required records as federal

records. Federal records, except for records containing specific types of sensitive information, are available to the public under the Freedom of Information Act (FOIA) and related federal policy. The FOIA requires the federal government to release government records upon request, except for information that is exempted from disclosure to protect an overriding interest, such as privacy, national security, and trade secrets and other confidential business information. The FOIA exemption for information in personnel and medical files (5 U.S.C. 552(b)(6)) is especially important for DOE CBDPP-required records, because many of these records contain medical information that is protected from release by this FOIA provision and other federal laws.

One commenter (Ex. 21) recommended that DOE address the retention of records in this rule. DOE has added to section 850.39(b) the requirement that Heads of DOE Departmental Elements ensure that the record series generated as required under this rule are retained for at least 75 years, which is consistent with DOE's policy on retaining medical records. This requirement will ensure that required CBDPP records that relate to workplace conditions will be available in the future to correlate with the beryllium-associated workers' medical records. Heads of DOE Departmental elements will be able to ensure that they can comply with section 850.39(b) if the CBDPP-required records generated by DOE responsible employer contractors are identified in the relevant contracts as DOE-owned documents. Therefore, DOE expects that Heads of DOE Departmental elements will direct their DOE contract officers to stipulate DOE ownership of these documents in those contracts.

The same commenter recommended that DOE address the transfer of records to successive responsible employers. DOE agrees that this information should be covered in the rule, and has added section 850.39(c) to require responsible employers to convey to DOE, or its designee, all record series generated under this rule if the responsible employer ceases to be involved in the CBDPP (e.g., ceases to be a DOE contractor).

Section 850.39(d) requires that responsible employers create links between data sets on workplace conditions and health outcomes to serve as a basis for understanding the beryllium health risk. This linkage of data will assist DOE and responsible employers in identifying unsafe work practices and understanding the

relationship between workplace conditions and CBD.

Section 850.39(e) requires the responsible employer to ensure the confidentiality of all records containing personal, private information that are generated as required by this rule. Protecting the confidentiality of these records is required by the Americans with Disabilities Act (42 U.S.C. 12112(d)(4)), the Privacy Act (5 U.S.C. 552a) and other applicable laws. In addition, DOE recognizes that many beryllium-associated workers will participate in some of the voluntary components of the CBDPP only if they believe that their personal information will be kept confidential.

Section 850.39(e)(1) explicitly requires responsible employers to ensure that all records that are transmitted to other parties do not contain names, social security numbers or any other variables, or combination of variables, that could be used to identify individuals. DOE recognizes that responsible employers must take these precautions to prevent the violation of confidentiality laws because personal information could be obtained from transmitted records, or inferred from information other than personal identifiers in the records, unless these precautions are taken.

One commenter (Ex. 4) stated that the rule's confidentiality requirements could prevent industrial hygienists from obtaining the health outcome information that is necessary to perform the linkage of site workplace conditions and health outcomes required by section 850.39(d). DOE does not intend health outcome information that would compromise confidentiality to be provided to industrial hygienists. DOE believes that the linkage required by section 850.39(d) could be performed after personal identifiers are removed from the health outcome information, making it consistent with section 850.39(e)(1).

Another commenter (Ex. 16) recommended that the final rule require the responsible employer to place beryllium medical records in the custody of a medical director, as opposed to the proposed requirement that medical records be held by the responsible employer. DOE recognizes that beryllium medical records may be in the custody of physicians involved in CBD studies other than the SOMD. DOE responds to this commenter's (Ex. 16) concern in section 850.39(e)(2)(i) by requiring responsible employers to ensure that individual medical information generated by the CBDPP is either included as part of the worker's site medical records and maintained by

the SOMD, or is maintained by another physician designated by the responsible employer.

Section 850.39(e)(2)(ii) (proposed section 850.38(d)) retains the proposed requirement that responsible employers ensure that individual medical information generated by the CBDPP is maintained separately from other records. A commenter (Ex. 19) recommended that the rule require responsible employers to use only one data system, maintained by the SOMD, to facilitate the analysis of the data and to increase workers' confidence in the confidentiality of SOMD-maintained records. DOE retained this requirement, however, because the separation of medical and other records is good file management. Further, the Americans with Disabilities Act (42 U.S.C. 12112(d)(4)(C)) requires such separation for privately-owned medical information. DOE recognizes that analysis of the data may be somewhat more difficult with separately maintained medical records, but separation of these records is required by law. There also are practical reasons to require the separation of these records. Personnel officials would require authorization from medical directors before accessing personnel records that were stored with medical records. At the same time, the medical directors would need a system to ensure that no confidential medical information was mixed in with the personnel records that personnel officials accessed. Employers eliminate these administrative burdens by maintaining separate medical and personnel records.

Section 850.39(f) requires the responsible employer to maintain all records required by this part in current and accessible electronic form to permit ready retrieval of data in a format that maintains confidentiality. This requirement is necessary to facilitate timely, efficient, and cost-effective transfer and analysis of CBDPP-related data. DOE has added the phrase "in current and accessible" to this section because DOE's experience indicates that the ability to use information held in electronic records is severely hampered if the electronic systems are out-of-date or the records are difficult to obtain. Similarly, DOE has added the phrase "that maintains confidentiality" to this section because DOE's experience indicates that transferring information while maintaining confidentiality cannot practically be accomplished using systems that must be modified, converted, or replaced before the transfer can occur.

A commenter (Ex. 21) recommended that the final rule require responsible employer contractors to use the same record retrieval identifiers that any predecessor contractor used. This would allow current contractors easily to link their data to the predecessor contractors' data on the same subject. DOE agrees that successive contractor's use of the same record retrieval identifiers would make exposure-health outcome and epidemiology studies easier to conduct. Therefore, DOE encourages successor contractors to use the same record retrieval identifiers as the predecessor contractor. DOE has not, however, made this a requirement in the final rule because it would be inconsistent with DOE's commitment to a performance-based rule to mandate this practice. DOE's goal in developing this rule is to allow the responsible employer maximum flexibility by specifying in the final rule only those record system characteristics and practices that DOE believes are essential for achieving successful CBDPPs.

Section 850.39(g) requires the responsible employer to transmit all records required by this rule, in a format that protects the confidentiality of individuals, to the DOE Assistant Secretary for Environment, Safety and Health on request. DOE replaced "Headquarters" in the proposed rule with "Assistant Secretary for Environment, Safety and Health" in the final rule to clarify that DOE's Office of Environment, Safety and Health is the DOE organization that is responsible for conducting occupational health studies that involve DOE workers.

Section 850.39(h) requires the responsible employer semi-annually to transmit to the DOE Office of Epidemiologic Studies, Office of Environment, Safety and Health, an electronic registry of beryllium-associated workers. The transmitted registry must protect confidentiality and include (but is not limited to) the following information for each worker in the registry: a unique identifier, date of birth, gender, site, job history, medical screening test results, exposure measurements, and results of referrals for specialized medical evaluations. DOE's collection of this information conforms to DOE Record System 88, "Epidemiologic and Other Studies, Surveys, and Surveillance," established as required by the Privacy Act. The Office of Epidemiologic Surveillance is responsible for administrative and policy decisions related to the beryllium registry and provides technical support to the SOMD.

The medical records generated by the CBDPP will be kept in appropriate

agency Privacy Act systems of records, such as DOE-33, "Personnel Medical Records," and/or DOE-88, and will be afforded the protection provided by the Privacy Act. Should the agency receive a request for these records, it will use every argument legally and reasonably available to it, including the authority granted under the FOIA and the Privacy Act and the agency's regulations implementing those statutes, to protect the privacy of individuals in the records generated by the CBDPP. DOE's policy expressed in 10 CFR 1004.3(e)(ii), to maximize public disclosure of records that pertain to concerns about the environment, public health or safety, or employee grievances, has never been applied to jeopardize the privacy interests of individuals in their medical records and will not be applied to jeopardize privacy interests in records generated by the CBDPP.

Section 850.39(h) includes "exposure measurements" in the registry as recommended by a commenter (Ex. 14). DOE had inadvertently omitted exposure measurements in the proposed registry provision. Also, section 850.39(h) includes beryllium-associated workers as recommended by a commenter (Ex. 28), rather than the narrower category of beryllium workers as proposed. DOE accepts this recommended change because it recognizes that some DOE workers who currently do not perform tasks involving beryllium are nonetheless at risk of contracting CBD (based on past potential exposure to beryllium) and must be included to complete the registry.

DOE proposed including beryllium-associated workers' names and social security numbers in the data that would be included in the beryllium registry. Several commenters (Exs. 16, 23, 28) argued that including the names and social security numbers of the beryllium-associated workers in the registry would compromise their privacy. DOE has responded to these commenters' concerns by replacing the proposed "names" and "social security numbers" with "unique identifier." The term "unique identifier" is defined in section 850.3(a) to mean the part of a paired set of labels, used in records that contain confidential information, that does not identify individuals except by using the matching label. Only the SOMD will have the key to match the unique identifier to the individual. This approach allows health and safety professionals and researchers to access the registry data and allows the SOMD to inform individuals of relevant study results, while maintaining confidentiality at all times.



The beryllium registry will serve as a repository for information on beryllium-associated workers. DOE will use the registry to determine the exposure profile and disease status of beryllium-associated workers, and provide feedback to the responsible employer on the effectiveness of the CBDPP. The registry will give DOE the ability to combine data from different facilities and perform analyses that are impossible to perform with the small amount of data that is available from each individual facility. The combined data may help DOE identify risk factors for CBD and evaluate the predictive value of medical tests such as the Be-LPT. Also, researchers may use the registry to conduct further epidemiological studies to better understand the cause and development of CBD and better identify those at risk.

One commenter (Ex. 26) recommended that DOE delete the beryllium registry from the final rule because the commenter believes that: (1) DOE has not adequately described the research for which it will be used, and (2) implementing the registry will be costly. This commenter suggested, as an alternative, that DOE retain the beryllium registry, but include in the rule the specific research protocol that would be used. DOE does not agree with the commenter. DOE is confident that the registry as provided in the final rule will support the studies needed to better understand the relationship between workplace conditions and CBD. This knowledge should provide the basis for improved worker protections. DOE also thinks that the expense of the registry is well justified by these benefits. DOE also disagrees with the recommended alternative of including the research protocols in this rule. Stipulating research protocols in regulations that could only be changed through notice-and-comment rulemaking could stifle research activities.

One commenter (Ex. 19) expressed the concern that DOE's Office of Environment, Safety, and Health use of the beryllium registry could overshadow important site-specific studies. DOE believes that studies at both the site and national level are important for understanding the relationship between workplace conditions and CBD. DOE has included section 850.39(d), which requires responsible employers to link data on workplace conditions and health outcomes, in part to facilitate the site level studies. The beryllium registry established by section 850.39(h) will be used by the Office of Epidemiologic Surveillance to support national level studies.

Two commenters (Exs. 19, 23) recommended that the rule require that a university or a university with input from an oversight board, or other suitably qualified organizations design the epidemiological analysis of the CBDPP-generated data. Although responsible employers and DOE's Office of Environment, Safety and Health may use universities or other suitably qualified organizations to design these analyses, DOE thinks it would be inappropriate to specify the use of such organizations in the rule. This recommendation is not adopted.

#### Section 850.40—Performance Feedback

The final rule requirements for performance feedback in section 850.40 are essentially the same as those proposed. Section 850.40(a) requires that responsible employers conduct periodic analysis and assessment of monitoring results, hazards identified, medical surveillance results, attainment of exposure reduction and minimization goals, and occurrence reporting data. DOE believes that the analysis of these data is important for the continuous improvement of the program.

To ensure that all workers have the information needed to safely perform their assigned tasks, section 850.40(b) requires that results of performance assessments conducted in accordance with this rule be provided to line managers, planners, worker protection staff, workers, medical staff, and others.

#### LIST OF COMMENTERS

Exhibit No.	Company/Organization
1	Atomic Weapons Establishment (AWE)
2	Oak Ridge Institute for Science and Education (ORISE)
3	U.S. Department of Navy, Navy Environmental Health Center
4	Fluor Daniel Hanford, Incorporated
5	Burlin McKinney
6	Idaho National Engineering and Environmental Laboratory (INEEL), Operated by Lockheed Martin
7	Freddy D. Marler Jr.
8	Alfred Glenn Bell
9	Lockheed Martin Idaho Technologies Company, INEEL
10	A Concerned American Citizen
11	Robert A. Gadon, CIH
12	Daniel R. Roberts, Danny Bush, Willie James Brooks, C.E. Tilley, Robert Lang Freels, Edna & Ernest Hugart, Victoria L. O'Sheel, Kenneth L. Moore, Cheryl A. Dyer, James M. Harvey, J. R. Miller, Luis Revilla, Connie Willis, Bruce Lawson, Lynn & Linda Cox, Roy & Debra Jones
13	American Industrial Hygiene Association (AIHA)

#### LIST OF COMMENTERS—Continued

Exhibit No.	Company/Organization
14	Gary Foster
15	Darrell Lawson
16	University of California, Laboratory Administration
17	Hanford Environmental Health Foundation
18	Serious Texans Against Nuclear Dumping (STAND), Incorporated
19	American College of Occupational and Environmental Medicine
20	Occupational Safety and Health Administration (OSHA)
21	University of Cincinnati Medical Center
22	Paper, Allied Industrial Chemical & Energy Workers Union (PACE)
23	Kaiser-Hill Company, Rocky Flats Environmental Technology Site
24	Lockheed Martin Energy Systems, Incorporated, (Y-12 Facility)
25	Lockheed Martin Energy Research Corporation (Oak Ridge Laboratory)
26	Brush Wellman, Incorporated
27	James Turner
28	National Jewish Medical and Research Center
29	National Institute for Occupational Safety and Health (NIOSH)
30	Consortium for Risk Evaluation with Stakeholder Participation (CRESP)
31	International Chemical Workers Union Council of the United Food and Commercial Workers International Union (ICWUC/UFCW)
32	Concerned Citizens for Nuclear Safety (CCNS)
33	Stanford Linear Accelerator Center (SLAC)
34	Fermi National Accelerator Laboratory (Fermi Lab)
35	United Steelworkers, Local 8031
36	U.S. House of Representatives, Van Hilleary
37	National Institute for Occupational Safety and Health (NIOSH)
38	Atomic Weapons Establishment (AWE)
38	Commodore Advance Science, Incorporated
40	Hanford Environmental Health Foundation
41	Oak Ridge National Laboratory
42	Argonne National Laboratory
43	Fluor Daniel Hanford, Incorporated
44	University of Cincinnati Medical Center
45	Gary Foster
46	Pantex Plant
47	Kaiser-Hill, Rocky Flats Environmental Technology Site
48	Paper, Allied Industrial Chemical & Energy Workers Union (PACE)
49	Consortium for Risk Evaluation with Stakeholder Participation (CRESP)
50	Brush Wellman, Incorporated
51	University of Cincinnati



## LIST OF COMMENTERS—Continued

Exhibit No.	Company/Organization
52	Building & Construction Trades Department, AFL-CIO

**V. Procedural Requirements***A. Review Under Executive Order 12866*

This rulemaking has been determined to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the executive order by the Office of Information and Regulatory Affairs (OIRA). The assessment of the potential costs and benefits of the proposed rule, which was made available to the public when the NOPR was published in the **Federal Register**, was updated to reflect changes made in the final rule.

Before conducting the assessment, DOE profiled the sites and activities that will be affected by the CBDPP rule and estimated the number of workers that will be affected by the rule. DOE estimates that 1,634 workers may be exposed or potentially exposed to airborne concentrations of beryllium in the DOE complex. Furthermore, DOE estimates that 1,236 of these workers (75.6 percent) are potentially exposed above the action level or the PEL prescribed in the CBDPP rule.

DOE began the cost estimation by reviewing the rule to determine which requirements of the rule will impose costs on affected entities. DOE then determined the controls (e.g., implementation of procedures, purchase of equipment) necessary for affected entities to be in compliance with each requirement. DOE's assessment refers to these determinations as compliance profiles. Since the goal of the compliance cost estimation is to determine the incremental costs of compliance (OMB Guidance, 1996), the compliance profiles were compared to the procedures and controls that are currently in place at DOE facilities affected by the rule (i.e., the baseline). Procedures and controls required by the CBDPP rule that are not currently in place at DOE facilities were considered new to the facilities, and thus would impose incremental costs on the affected entities. The compliance profiles were then adjusted to reflect only the required incremental controls.

The next step in DOE's assessment was to estimate the costs for each compliance profile. DOE collected data on the cost of each element contained in

the compliance profiles. The profiles are designed to reflect the full opportunity cost of compliance. For example, the compliance profile for performing a Be-LPT test includes not only the test itself, but also the labor time for the worker and physician to conduct the test, shipping the sample to a lab, and analyzing and interpreting the results of the test. The cost data was obtained from a variety of sources, including CBDPP plans submitted under DOE Notice 440.1, a 1999 Environment, Safety and Health (EH) Cost Survey, contact with DOE facilities subject to the CBDPP rule, trade publications, the U.S. Office of Personnel Management (OPM) (e.g., for wage rates), and previous economic analyses of other regulations (e.g., regulatory impact analyses of OSHA health standards). This cost data was then applied to the compliance profiles to determine the costs associated with each profile, providing an estimate of the incremental cost for each requirement.

DOE-wide cost estimates for each requirement were generated by multiplying the number of units affected by each requirement by the incremental cost for each requirement. Costs estimated in this step were then annualized using a discount rate. Discount rates are used to translate costs (and benefits) that are incurred in future years into a present value. Following OMB Guidance (1992), DOE chose a 7 percent discount rate. In the analysis, DOE uses the 7 percent discount rate for three purposes: (1) To annualize the costs of equipment or other program elements that have a lifetime of more than one year, (2) to translate the costs incurred in future years into a present value, and (3) to calculate the annualized cost of initial requirements of DOE N 440.1 and the CBDPP rule.

DOE estimated the total compliance costs of the CBDPP, including the costs of the interim CBDPP under DOE Notice 440.1 and the costs of this final rule. DOE estimates an \$8.54 million annualized cost on DOE contractors between July 1997 and December 1999 (compliance with DOE Notice 440.1) and a \$31.55 million annualized cost on DOE contractors between December 1999 (the assumed effective date of the final rule) and December 2009. This includes an initial (i.e., startup) cost of \$9.02 million incurred in July 1997 and another initial cost of \$2.22 million incurred in December 1999.

DOE also assessed the potential benefits of the CBDPP for DOE, DOE contractors, and workers. DOE assessed the following benefits of the CBDPP rule: (1) Reduced medical costs; (2) reduced mortality; (3) increased quality

of life; (4) increased medical surveillance for workers at risk; (5) increased work-life for beryllium workers; (6) increased productivity; (7) reduced legal costs for DOE and DOE contractors; and (8) a reduction in the externality associated with beryllium exposure through a transfer of the medical costs from workers to DOE contractors. Because sufficient information on the dose-response relationship for beryllium is not available within the scientific community, DOE could not relate reduced levels of exposure to a specific reduction in CBD and beryllium sensitization. Nevertheless, DOE estimates that the monetary benefits from reduced lifetime medical costs could range from \$10,100 to \$16,093 for each avoided case of beryllium sensitization or CBD.

DOE also assessed the potential economic impacts of the rule on the provision of public goods that contain beryllium and the impact on the market for beryllium. DOE assessed each of these potential impacts and determined neither will impose a significant economic impact. DOE determined that the potential reduction in the provision of beryllium-containing public goods will be minimal and, consequently, the reduction in demand for beryllium will also be small.

DOE's assessment of the potential costs and benefits of the final has been placed in the rulemaking file (Docket Number EH-RM-98-BRYLM). DOE also has placed in the rulemaking file a document that identifies the substantive changes between the draft final rule submitted to the OIRA for review and the final rule published today, including identification of the changes suggested or recommended by OIRA. These documents may be reviewed and copied at the DOE of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

*B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that an agency prepare a regulatory flexibility analysis and publish it at the time of publication of general notice of proposed rulemaking for the rule. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

Today's action establishes DOE's regulations for a CBDPP to reduce the number of DOE Federal and contractor workers exposed to beryllium, minimize the levels of and potential for exposure to beryllium, and establish medical surveillance requirements to ensure early detection of disease. The contractors who manage and operate DOE facilities are principally responsible for implementing the CBDPP. DOE has considered whether these contractors are "small businesses," as that term is defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)). The Regulatory Flexibility Act's definition incorporates the definition of "small business concern" in the Small Business Act, which the Small Business Administration (SBA) has developed through size standards in 13 CFR part 121. Small businesses are business concerns which, together with their affiliates, have no more than 500 to 1500 employees, varying by SIC category, and annual receipts of between \$0.5 million to \$25 million, again varying by SIC category. The DOE contractors subject to the CBDPP requirements exceed the SBA's size standards for small businesses. In addition, DOE contractors are reimbursed through their contracts with DOE for the costs of complying with DOE health and safety program requirements. They will not, therefore, be adversely impacted by the requirements in the rule. For these reasons, DOE certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

#### *C. Review Under the Paperwork Reduction Act*

DOE submitted the proposed collections of information in this rule to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995 (42 U.S.C. 3507(d)). The information that DOE contractors are required to produce, maintain and report is necessary to permit the Department to manage and oversee the health and safety programs that control worker exposure to beryllium. The Office of Management and Budget has not yet approved the collections of information in this rule. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number (5 CFR 1320.5(b)).

#### *D. Review Under the National Environmental Policy Act*

DOE has reviewed the promulgation of 10 CFR Part 850 under the National Environmental Policy Act (NEPA) of

1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508), and DOE's NEPA implementing procedures (10 CFR Part 1021). DOE has completed an Environmental Assessment, and on the basis of that assessment has determined that an environmental impact statement is not required and issued a Finding of No Significant Impact (FONSI) for this rule. In the Notice of Proposed Rulemaking, the Department announced the availability of the draft Environmental Assessment and requested comments on the Assessment. DOE did not receive any comments on the draft Environmental Assessment. The Environmental Assessment updates the draft Environmental Assessment (DOE/EA 1249) to reflect changes in the final rule made in response to public comments on the rule. The Environmental Assessment and FONSI are available for inspection at the DOE Freedom of Information Reading Room, 1E–190, 1000 Independence Avenue SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### *E. Review Under Executive Order 13132*

Executive Order 13132 (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

#### *F. Review Under Executive Order 12988*

Section 3 of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. Executive agencies are required by section 3(a) to adhere to the following general requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to

the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that this final rule meets the relevant standards of Executive Order 12988.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in an agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year. It also requires a federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant Federal intergovernmental mandate," and requires an agency plan for giving notice and an opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The final rule published today applies only to activities conducted by or for DOE, and its implementation will not result in an expenditure of \$100 million in any year by State, local or tribal governments or the private sector. Therefore, the requirements of Title II Unfunded Mandates Reform Act of 1995 do not apply.

#### *H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996*

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been

determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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#### Appendix B to the Preamble— Questions and Answers Concerning the Beryllium-Induced Lymphocyte Proliferation Test (Be-LPT), Medical Records, and the Department of Energy (DOE) Beryllium Registry

##### What Is the Be-LPT Blood Test?

In the Be-LPTs, disease-fighting blood cells that are normally found in the body, called lymphocytes, are examined in the laboratory and separated from your blood. Beryllium and other test agents are then added to small groups of these lymphocytes. If these lymphocytes react to the beryllium in a specific way, the test results are "positive." If they do not react to beryllium, the test is "negative."

Experts believe that the Be-LPT shows positive results in individuals who have become sensitive or allergic to beryllium. It is unclear what this sensitivity means. Studies have shown it to be an early sign of chronic beryllium disease (CBD) in many individuals. In others, sensitivity might simply mean that the person was exposed to beryllium and that his or her body has reacted. It might mean that an individual is more likely than others to get CBD. You are being offered the Be-LPT because doctors believe it is useful in detecting cases of CBD early or cases that might otherwise be missed or diagnosed as another type of lung problem. Once CBD is identified, doctors can determine the treatment that is needed to minimize the lung damage that CBD causes.

As in any other medical test, the Be-LPT sometimes fails or provides unclear results. The laboratory calls these results "uninterpretable." Even when the test appears successful, it may appear positive when a person is not sensitive or allergic to beryllium. This is called a "false positive" result. It is also

possible that the test will show "negative" results when a person is actually "sensitized" to beryllium. This is a "false negative" result. If you have a "uninterpretable" blood Be-LPT result, you will be asked to provide another blood sample so the test can be repeated. If you have "positive" results, you will be offered further medical tests to confirm or rule out CBD. Remember that you may refuse further tests at this point or at any point during your medical evaluations.

It is important for you to know that if the physical examination or the results from other tests you are receiving suggest that you have CBD, you may be offered further medical tests. These medical tests may be offered even if your Be-LPT is "negative."

Some individuals with confirmed "positive" Be-LPTs but no other signs of CBD have developed the disease. The likelihood of this happening will only be known after large groups of potentially exposed individuals have had their blood tested, have had further medical tests, and are studied for many years.

#### *Do I Have To Have the Be-LPT Done?*

No. Your participation in the medical surveillance program is strictly voluntary. You may refuse any of the tests offered to you, including the Be-LPT. If you change your mind, you are free to participate in the program at any time. Talking with your family, your doctor, or other people you trust may help you decide. The physicians in the clinic that provide the tests can also help answer any questions that you might have.

#### *What Will Happen if I Decide To Have the Be-LPT Blood Test?*

A small amount of your blood will be drawn from a vein in your arm and sent to a laboratory. There is little physical risk in drawing blood. Slight pain and bruising may occur in a few individuals. Rarely, the needle puncture will become infected. Other routine medical evaluation tests may be offered when you have the Be-LPTs including a physical examination, a chest X-ray, and breathing tests that help find signs of CBD, if they exist.

Other diseases may resemble CBD. Different medical tests can help a physician decide if a person has CBD or another disease. If the examining physician suspects that you have CBD, he or she will recommend additional medical tests to help confirm a diagnosis. Separate information regarding these additional medical tests will be given to you if they are recommended. Your consent will be

requested when the extra tests are given. You can always refuse additional tests, if you so choose. Your employer will pay for all tests.

#### *When Will I Receive the Results of My Be-LPT Blood Test?*

It could take 2 to 4 weeks for you to receive a letter informing you of your test results. The test itself usually takes 8 days to perform. The testing laboratory reports results to the physician who examined you and he or she will notify you.

#### *Could a Positive Be-LPT Blood Test Affect My Job Assignment?*

Yes. If you have a positive Be-LPT or have been diagnosed with CBD, your employer may inform you that the SOMD has recommended that you be temporarily or permanently removed from working with beryllium. You will be given information and counseling to help you decide whether to accept medical removal. If you agree to medical removal, every effort will be made to offer you another job that you are qualified (or can be trained for in a short period) to perform and where the beryllium exposures will be as low as possible, but in no case above the action level.

If you are temporarily removed, you will maintain your total normal earnings, seniority, and other benefits until you are placed in another job for 1 year, whichever comes first. If you are permanently removed, you will maintain your total normal earnings, seniority, and other benefits until you are placed in another job or for 2 years, whichever comes first. If you become physically unable to continue working, you may be eligible for workers' compensation and other benefits.

#### *Will I Lose Any Pay or Any Other Benefits by Having the Examination During Normal Working Hours?*

No. Your examination will be scheduled during normal work hours. You will not be required to take leave to have the examination, nor will you lose pay or any other benefits.

#### *What Will Happen to the Records of the Medical Examination Results?*

The results of your Be-LPT and other screening tests will be made available to you and, with your consent, to your physician. The information also will become part of your medical record, which the clinic keeps.

The results of tests and examinations in your medical record will be available to the physicians and nurses in this clinic, and possibly to scientists conducting health studies. The test

results in your medical records will be kept in specially secured files under the supervision of physicians and nurses in the clinic, separate from other personnel records. Your test results will be medically confidential data and will not be released to anyone other than those listed in the following, unless you provide written permission. The following groups will have direct access to this information:

1. Clinic staff members;
2. Medical specialists who will provide or arrange for additional medical treatment or tests, if necessary;
3. U.S. Department of Energy Beryllium Registry staff; and
4. The Centers for Disease Control and Prevention and the National Institute for Occupational Safety and Health officials may require direct access to records that identify you by name for health studies.

If information about you is used in reports or a published health study, your identity will be disguised. You will not be identified in any published report or presentation.

#### *What Laws Protect Me if I Consent To Participate in the Blood Be-LPT Testing Program?*

State medical and nursing licensing boards enforce codes of ethics that require doctors and nurses to keep medical information confidential. The Privacy Act prevents unauthorized access to your DOE records without your permission. The information in records kept by your employer must be handled in accordance with the Americans with Disabilities Act and the Privacy Act of 1974. The consent form you sign also provides additional protection.

#### *Can My Privacy and the Confidentiality of My Medical Records Be Guaranteed?*

No. Access to or release of records could be required under court order, or DOE directive, but it is unlikely. It would also be available as the Freedom of Information Act or Privacy Act provide, such as to Congress, to an individual upon a showing of compelling circumstances affecting the health and safety of an individual, etc. If you apply for another job or for insurance, you may be requested to release the records to a future employer or an insurance company. If, for medical reasons, it is recommended that you transfer to an area where you will not contact beryllium, and you elect to do so, the personnel department and your supervisor will be notified. They will not be told the specific results of your tests but, because of the restrictions, they may assume that your Be-LPT results were positive.

*What Is the DOE Beryllium Registry?*

Your health and the health of all workers is a major concern to DOE. There is a need to learn more about chronic beryllium disease and what causes some individuals to react more strongly than others do. A DOE beryllium registry has been established to collect and maintain information on workers who are exposed to beryllium. This registry is a tool that will be used in health studies to better understand the nature of the disease. With it we can measure the burden of health effects related to beryllium exposure. The registry will also be used to evaluate the effectiveness of exposure control programs.

In addition to information about your beryllium-related exposures, the results of beryllium sensitization testing and/or CBD status collected by your employer will be added to the registry. Your employer must treat this information as confidential medical information and can only use or disclose this information in conformance with the Privacy Act of 1974, the Americans with Disabilities Act, and other applicable laws. Your employer will establish a unique identifier for you that will be included in the registry instead of your personal identifying information (such as your name and social security number). The unique identifier will be used to inform your employer of any study results that you and your employer's Site Occupational Medical Director (SOMD) should know about. The SOMD will know to whom the unique identifier refers and will notify you of these results. At no time will your name or other personal identifying information be included in any report. The confidentiality of personal information in DOE records is protected under the Privacy Act of 1974.

**List of Subjects in 10 CFR Part 850**

Beryllium, Chronic beryllium disease, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

Issued in Washington, D.C., on November 24, 1999.

**Bill Richardson,**  
*Secretary of Energy.*

For the reason set forth in the preamble, Title 10, Chapter III of the Code of Federal Regulations is amended by adding a new part 850 as set forth below.

**PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM****Subpart A—General Provisions**

- Sec.  
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850.35 Medical removal.  
850.36 Medical consent.  
850.37 Training and counseling.  
850.38 Warning signs and labels.  
850.39 Recordkeeping and use of information.  
850.40 Performance feedback.

**Appendix A to Part 850—Chronic Beryllium Disease Prevention Program Informed Consent Form.**

**Authority:** 42 U.S.C. 2201(i)(3), (p); 29 U.S.C. 668; E.O. 12196, 3 CFR 1981 comp., p. 145 as amended.

**Subpart A—General Provisions****§ 850.1 Scope.**

This part establishes a chronic beryllium disease prevention program (CBDPP) that supplements and is integrated into existing worker protection programs that are established for Department of Energy (DOE) employees and DOE contractor employees.

**§ 850.2 Applicability.**

- (a) This part applies to:  
(1) DOE offices responsible for operations or activities that involve present or past exposure, or the potential for exposure, to beryllium at DOE facilities;  
(2) DOE contractors with operations or activities that involve present or past exposure, or the potential for exposure, to beryllium at DOE facilities; and

(3) Any current DOE employee, DOE contractor employee, or other worker at a DOE facility who is or was exposed or potentially exposed to beryllium at a DOE facility.

(b) This part does not apply to:  
(1) Beryllium articles; and  
(2) DOE laboratory operations that meet the definition of laboratory use of hazardous chemicals in 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemical in Laboratories.

**§ 850.3 Definitions.**

(a) As used in this part:  
*Action level* means the level of airborne concentration of beryllium established pursuant to section 850.23 of this part that, if met or exceeded, requires the implementation of worker protection provisions specified in that section.

*Authorized person* means any person required by work duties to be in a regulated area.

*Beryllium* means elemental beryllium and any insoluble beryllium compound or alloy containing 0.1 percent beryllium or greater that may be released as an airborne particulate.

*Beryllium activity* means an activity taken for, or by, DOE at a DOE facility that can expose workers to airborne beryllium, including but not limited to design, construction, operation, maintenance, or decommissioning, and which may involve one DOE facility or operation or a combination of facilities and operations.

*Beryllium article* means a manufactured item that is formed to a specific shape or design during manufacture, that has end-use functions that depend in whole or in part on its shape or design during end use, and that does not release beryllium or otherwise result in exposure to airborne concentrations of beryllium under normal conditions of use.

*Beryllium-associated worker* means a current worker who is or was exposed or potentially exposed to airborne concentrations of beryllium at a DOE facility, including:

- (1) A beryllium worker;
- (2) A current worker whose work history shows that the worker may have been exposed to airborne concentrations of beryllium at a DOE facility;
- (3) A current worker who exhibits signs or symptoms of beryllium exposure; and
- (4) A current worker who is receiving medical removal protection benefits.

*Beryllium emergency* means any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations that results in an unexpected

and significant release of beryllium at a DOE facility.

*Beryllium-induced lymphocyte proliferation test* (Be-LPT) is an in vitro measure of the beryllium antigen-specific, cell-mediated immune response.

*Beryllium worker* means a current worker who is regularly employed in a DOE beryllium activity.

*Breathing zone* is defined as a hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches.

*DOE* means the U.S. Department of Energy.

*DOE contractor* means any entity under contract with DOE (or its subcontractor) that has responsibility for performing beryllium activities at DOE facilities.

*DOE facility* means any facility operated by or for DOE.

*Head of DOE Field Element* means an individual who is the manager or head of the DOE operations office or field office, or any official to whom the Head of DOE Field Element delegates his or her functions under this part.

*High-efficiency particulate air (HEPA) filter* means a filter capable of trapping and retaining at least 99.97 percent of 0.3 micrometer monodispersed particles.

*Immune response* refers to the series of cellular events by which the immune system reacts to challenge by an antigen.

*Medical removal protection benefits* means the employment rights established by section 850.35 of this part for beryllium-associated workers who voluntarily accept temporary or permanent medical removal from beryllium areas following a recommendation by the Site Occupational Medicine Director.

*Operational area* means an area where workers are routinely in the presence of beryllium as part of their work activity.

*Regulated area* means an area demarcated by the responsible employer in which the airborne concentration of beryllium exceeds, or can reasonably be expected to exceed, the action level.

*Removable contamination* means beryllium contamination that can be removed from surfaces by nondestructive means, such as casual contact, wiping, brushing or washing.

*Responsible employer* means:

(1) For DOE contractor employees, the DOE contractor office that is directly responsible for the safety and health of DOE contractor employees while performing a beryllium activity or other activity at a DOE facility; or

(2) For DOE employees, the DOE office that is directly responsible for the safety and health of DOE Federal

employees while performing a beryllium activity or other activity at a DOE facility; and

(3) Any person acting directly or indirectly for such office with respect to terms and conditions of employment of beryllium-associated workers.

*Site Occupational Medical Director (SOMD)* means the physician responsible for the overall direction and operation of the site occupational medicine program.

*Unique identifier* means the part of a paired set of labels, used in records that contain confidential information, that does not identify individuals except by using the matching label.

*Worker* means a person who performs work for or on behalf of DOE, including a DOE employee, an independent contractor, a DOE contractor or subcontractor employee, or any other person who performs work at a DOE facility.

*Worker exposure* means the exposure of a worker to airborne beryllium that would occur if the worker were not using respiratory protective equipment.

(b) Terms undefined in this part that are defined in the Atomic Energy Act of 1954 shall have the same meaning as under that Act.

#### **§ 850.4 Enforcement.**

DOE may take appropriate steps under its contracts with DOE contractors to ensure compliance with this part. These steps include, but are not limited to, contract termination or reduction in fee.

#### **§ 850.5 Dispute resolution.**

(a) Subject to paragraphs (b) and (c) of this section, any worker who is adversely affected by an action taken, or failure to act, under this part may petition the Office of Hearings and Appeals for relief in accordance with 10 CFR part 1003, Subpart G.

(b) The Office of Hearings and Appeals may not accept a petition from a worker unless the worker requested the responsible employer to correct the violation, and the responsible employer refused or failed to take corrective action within a reasonable time.

(c) If the dispute relates to a term or condition of employment that is covered by a grievance-arbitration provision in a collective bargaining agreement, the worker must exhaust all applicable grievance-arbitration procedures before filing a petition for relief with the Office of Hearings and Appeals. A worker is deemed to have exhausted all applicable grievance-arbitration procedures if 150 days have passed since the filing of a grievance and a final decision on it has not been issued.

### **Subpart B—Administrative Requirements**

#### **§ 850.10 Development and approval of the CBDPP.**

(a) *Preparation and submission of initial CBDPP to DOE.* (1) The responsible employer at a DOE facility must ensure that a CBDPP is prepared for the facility and submitted to the appropriate Head of DOE Field Element before beginning beryllium activities, but no later than April 6, 2000 of this part.

(2) If the CBDPP has separate sections addressing the activities of multiple contractors at the facility, the Head of DOE Field Element will designate a single DOE contractor to review and approve the sections prepared by other contractors, so that a single consolidated CBDPP for the facility is submitted to the Head of DOE Field Element for review and approval.

(b) *DOE review and approval.* The appropriate Head of DOE Field Element must review and approve the CBDPP.

(1) The initial CBDPP and any updates are deemed approved 90 days after submission if they are not specifically approved or rejected by DOE earlier.

(2) The responsible employer must furnish a copy of the approved CBDPP, upon request, to the DOE Assistant Secretary for Environment, Safety and Health or designee, DOE program offices, and affected workers or their designated representatives.

(c) *Update.* The responsible employer must submit an update of the CBDPP to the appropriate Head of DOE Field Element for review and approval whenever a significant change or significant addition to the CBDPP is made or a change in contractors occurs. The Head of DOE Field Element must review the CBDPP at least annually and, if necessary, require the responsible employer to update the CBDPP.

(d) *Labor Organizations.* If a responsible employer employs or supervises beryllium-associated workers who are represented for collective bargaining by a labor organization, the responsible employer must:

(1) Give the labor organization timely notice of the development and implementation of the CBDPP and any updates thereto; and

(2) Upon timely request, bargain concerning implementation of this part, consistent with the Federal labor laws.

#### **§ 850.11 General CBDPP requirements.**

(a) The CBDPP must specify the existing and planned operational tasks that are within the scope of the CBDPP. The CBDPP must augment and, to the

extent feasible, be integrated into the existing worker protection programs that cover activities at the facility.

(b) The detail, scope, and content of the CBDPP must be commensurate with the hazard of the activities performed, but in all cases the CBDPP must:

(1) Include formal plans and measures for maintaining exposures to beryllium at or below the permissible exposure level prescribed in § 850.22;

(2) Satisfy each requirement in subpart C of this part;

(3) Contain provisions for:

(i) Minimizing the number of workers exposed and potentially exposed to beryllium;

(ii) Minimizing the number of opportunities for workers to be exposed to beryllium;

(iii) Minimizing the disability and lost work time of workers due to chronic beryllium disease, beryllium sensitization and associated medical care; and

(iv) Setting specific exposure reduction and minimization goals that are appropriate for the beryllium activities covered by the CBDPP to further reduce exposure below the permissible exposure limit prescribed in § 850.22.

#### **§ 850.12 Implementation.**

(a) The responsible employer must manage and control beryllium exposures in all DOE beryllium activities consistent with the approved CBDPP.

(b) No person employed by DOE or a DOE contractor may take or cause any action inconsistent with the requirements of:

(1) This part,

(2) An approved CBDPP, and

(3) Any other Federal statute or regulation concerning the exposure of workers to beryllium at DOE facilities.

(c) No task involving potential exposure to airborne beryllium that is outside the scope of the existing CBDPP may be initiated until an update of the CBDPP is approved by the Head of DOE Field Element, except in an unexpected situation and, then, only upon approval of the Head of DOE Field Element.

(d) Nothing in this part precludes a responsible employer from taking any additional protective action that it determines to be necessary to protect the health and safety of workers.

(e) Nothing in this part affects the responsibilities of DOE officials under the Federal Employee Occupational Safety and Health Program (29 CFR part 1960) and related DOE directives.

#### **§ 850.13 Compliance.**

(a) The responsible employer must conduct activities in compliance with its CBDPP.

(b) The responsible employer must achieve compliance with all elements of its CBDPP no later than January 7, 2002.

(c) With respect to a particular beryllium activity, the contractor in charge of the activity is responsible for complying with this part. If no contractor is responsible for a beryllium activity, DOE must ensure implementation of, and compliance with, this part.

#### **Subpart C—Specific Program Requirements**

##### **§ 850.20 Baseline beryllium inventory.**

(a) The responsible employer must develop a baseline inventory of the locations of beryllium operations and other locations of potential beryllium contamination, and identify the workers exposed or potentially exposed to beryllium at those locations.

(b) In conducting the baseline inventory, the responsible employer must:

(1) Review current and historical records;

(2) Interview workers;

(3) Document the characteristics and locations of beryllium at the facility; and

(4) Conduct air, surface, and bulk sampling.

(c) The responsible employer must ensure that:

(1) The baseline beryllium inventory is managed by a qualified individual (e.g., a certified industrial hygienist); and

(2) The individuals assigned to this task have sufficient knowledge and experience to perform such activities properly.

##### **§ 850.21 Hazard assessment.**

(a) If the baseline inventory establishes the presence of beryllium, the responsible employer must conduct a beryllium hazard assessment that includes an analysis of existing conditions, exposure data, medical surveillance trends, and the exposure potential of planned activities. The exposure determinants, characteristics and exposure potential of activities must be prioritized so that the activities with the greatest risks of exposure are evaluated first.

(b) The responsible employer must ensure that:

(1) The hazard assessment is managed by a qualified individual (e.g., a certified industrial hygienist); and

(2) The individuals assigned to this task have sufficient knowledge and

experience to perform such activities properly.

##### **§ 850.22 Permissible exposure limit.**

The responsible employer must assure that no worker is exposed to an airborne concentration of beryllium greater than the permissible exposure limit established in 29 CFR 1910.1000, as measured in the worker's breathing zone by personal monitoring, or a more stringent TWA PEL that may be promulgated by the Occupational Safety and Health Administration as a health standard.

##### **§ 850.23 Action level.**

(a) The responsible employer must include in its CBDPP an action level that is no greater than 0.2 µg/m<sup>3</sup>, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring.

(b) If an airborne concentration of beryllium is at or above the action level, the responsible employer must implement §§ 850.24(c) (periodic monitoring), 850.25 (exposure reduction and minimization), 850.26 (regulated areas), 850.27 (hygiene facilities and practices), 850.28 (respiratory protection), 850.29 (protective clothing and equipment), and 850.38 (warning signs) of this part.

##### **§ 850.24 Exposure monitoring.**

(a) *General.* The responsible employer must ensure that:

(1) Exposure monitoring is managed by a qualified individual (e.g., a certified industrial hygienist); and

(2) The individuals assigned to this task have sufficient industrial hygiene knowledge and experience to perform such activities properly.

(b) *Initial monitoring.* The responsible employer must perform initial monitoring in areas that may have airborne beryllium, as shown by the baseline inventory and hazard assessment. The responsible employer must apply statistically-based monitoring strategies to obtain a sufficient number of sample results to adequately characterize exposures, before reducing or terminating monitoring.

(1) The responsible employer must determine workers' 8-hour TWA exposure levels by conducting personal breathing zone sampling.

(2) Exposure monitoring results obtained within the 12 months preceding the effective date of this part may be used to satisfy this requirement if the measurements were made as provided in paragraph (b)(1) of this section.

(c) *Periodic exposure monitoring.* The responsible employer must conduct



periodic monitoring of workers who work in areas where airborne concentrations of beryllium are at or above the action level. The monitoring must be conducted in a manner and at a frequency necessary to represent workers' exposure, as specified in the CBDPP. This periodic exposure monitoring must be performed at least every 3 months (quarterly).

(d) *Additional exposure monitoring.* The responsible employer must perform additional monitoring if operations, maintenance or procedures change, or when the responsible employer has any reason to suspect such a change has occurred.

(e) *Accuracy of monitoring.* The responsible employer must use a method of monitoring and analysis that has an accuracy of not less than plus or minus 25 percent, with a confidence level of 95 percent, for airborne concentrations of beryllium at the action level.

(f) *Analysis.* The responsible employer must have all samples collected to satisfy the monitoring requirements of this part analyzed in a laboratory accredited for metals by the American Industrial Hygiene Association (AIHA) or a laboratory that demonstrates quality assurance for metals analysis that is equivalent to AIHA accreditation.

(g) *Notification of monitoring results.*

(1) The responsible employer must, within 10 working days after receipt of any monitoring results, notify the affected workers of monitoring results in writing. This notification of monitoring results must be:

(i) Made personally to the affected worker; or

(ii) Posted in location(s) that is readily accessible to the affected worker, but in a manner that does not identify the individual to other workers.

(2) If the monitoring results indicate that a worker's exposure is at or above the action level, the responsible employer must include in the notice:

(i) A statement that the action level has been met or exceeded; and

(ii) A description of the corrective action being taken by the responsible employer to reduce the worker's exposure to below the action level, if practicable.

(3) If the monitoring results indicate that worker exposure is at or above the action level, the responsible employer must also notify DOE and the SOMD of these results within 10 working days after receipt.

#### **§ 850.25 Exposure reduction and minimization.**

(a) The responsible employer must ensure that no worker is exposed above the exposure limit prescribed in § 850.22.

(b) The responsible employer must, in addition:

(1) Where exposure levels are at or above the action level, establish a formal exposure reduction and minimization program to reduce exposure levels to below the action level, if practicable. This program must be described in the responsible employer's CBDPP and must include:

(i) Annual goals for exposure reduction and minimization;

(ii) A rationale for and a strategy for meeting the goals;

(iii) Actions that will be taken to achieve the goals; and

(iv) A means of tracking progress towards meeting the goals or demonstrating that the goals have been met.

(2) Where exposure levels are below the action level, implement actions for reducing and minimizing exposures, if practicable. The responsible employer must include in the CBDPP a description of the steps to be taken for exposure reduction and minimization and a rationale for those steps.

(c) The responsible employer must implement exposure reduction and minimization actions using the conventional hierarchy of industrial hygiene controls (*i.e.*, engineering controls, administrative controls, and personal protective equipment in that order).

#### **§ 850.26 Regulated areas.**

(a) If airborne concentrations of beryllium in areas in DOE facilities are measured at or above the action level, the responsible employer must establish regulated areas for those areas.

(b) The responsible employer must demarcate regulated areas from the rest of the workplace in a manner that adequately alerts workers to the boundaries of such areas.

(c) The responsible employer must limit access to regulated areas to authorized persons.

(d) The responsible employer must keep records of all individuals who enter regulated areas. These records must include the name, date, time in and time out, and work activity.

#### **§ 850.27 Hygiene facilities and practices.**

(a) *General.* The responsible employer must assure that in areas where workers are exposed to beryllium at or above the action level, without regard to the use of respirators:

(1) Food or beverage and tobacco products are not used;

(2) Cosmetics are not applied, except in change rooms or areas and shower facilities required under paragraphs (b) and (c) of this section; and

(3) Beryllium workers are prevented from exiting areas that contain beryllium with contamination on their bodies or their personal clothing.

(b) *Change rooms or areas.* The responsible employer must provide clean change rooms or areas for beryllium workers who work in regulated areas.

(1) Separate facilities free of beryllium must be provided for beryllium workers to change into, and store, personal clothing, and clean protective clothing and equipment to prevent cross-contamination;

(2) The change rooms or areas that are used to remove beryllium-contaminated clothing and protective equipment must be maintained under negative pressure or located so as to minimize dispersion of beryllium into clean areas; and

(c) *Showers and handwashing facilities.* (1) The responsible employer must provide handwashing and shower facilities for beryllium workers who work in regulated areas.

(2) The responsible employer must assure that beryllium workers who work in regulated areas shower at the end of the work shift.

(d) *Lunchroom facilities.* (1) The responsible employer must provide lunchroom facilities that are readily accessible to beryllium workers, and ensure that tables for eating are free of beryllium, and that no worker in a lunchroom facility is exposed at any time to beryllium at or above the action level.

(2) The responsible employer must assure that beryllium workers do not enter lunchroom facilities with protective work clothing or equipment unless the surface beryllium has been removed from clothing and equipment by HEPA vacuuming or other method that removes beryllium without dispersing it.

(e) The change rooms or areas, shower and handwashing facilities, and lunchroom facilities must comply with 29 CFR 1910.141, Sanitation.

#### **§ 850.28 Respiratory protection.**

(a) The responsible employer must establish a respiratory protection program that complies with the respiratory protection program requirements of 29 CFR 1910.134, Respiratory Protection.

(b) The responsible employer must provide respirators to, and ensure that they are used by, all workers who:



(1) Are exposed to an airborne concentration of beryllium at or above the action level, or

(2) Are performing tasks for which analyses indicate the potential for exposures at or above the action level.

(c) The responsible employer must include in the respiratory protection program any beryllium-associated worker who requests to use a respirator for protection against airborne beryllium, regardless of measured exposure levels.

(d) The responsible employer must select for use by workers:

(1) Respirators approved by the National Institute for Occupational Safety and Health (NIOSH) if NIOSH-approved respirators exist for a specific DOE task; or

(2) Respirators that DOE has accepted under the DOE Respiratory Protection Acceptance Program if NIOSH-approved respirators do not exist for specific DOE tasks.

#### **§ 850.29 Protective clothing and equipment.**

(a) The responsible employer must provide protective clothing and equipment to beryllium workers and ensure its appropriate use and maintenance, where dispersible forms of beryllium may contact worker's skin, enter openings in workers' skin, or contact workers' eyes, including where:

(1) Exposure monitoring has established that airborne concentrations of beryllium are at or above the action level;

(2) Surface contamination levels measured or presumed prior to initiating work are above the level prescribed in § 850.30;

(3) Surface contamination levels results obtained to confirm housekeeping efforts are above the level prescribed in § 850.30; and

(4) Any beryllium-associated worker who requests the use of protective clothing and equipment for protection against airborne beryllium, regardless of measured exposure levels.

(b) The responsible employer must comply with 29 CFR 1910.132, Personal Protective Equipment General Requirements, when workers use personal protective clothing and equipment.

(c) The responsible employer must establish procedures for donning, doffing, handling, and storing protective clothing and equipment that:

(1) Prevent beryllium workers from exiting areas that contain beryllium with contamination on their bodies or their personal clothing; and

(2) Include beryllium workers exchanging their personal clothing for

full-body protective clothing and footwear before they begin work in regulated areas.

(d) The responsible employer must ensure that no worker removes beryllium-contaminated protective clothing and equipment from areas that contain beryllium, except for workers authorized to launder, clean, maintain, or dispose of the clothing and equipment.

(e) The responsible employer must prohibit the removal of beryllium from protective clothing and equipment by blowing, shaking, or other means that may disperse beryllium into the air.

(f) The responsible employer must ensure that protective clothing and equipment is cleaned, laundered, repaired, or replaced as needed to maintain effectiveness. The responsible employer must:

(1) Ensure that beryllium-contaminated protective clothing and equipment, when removed for laundering, cleaning, maintenance, or disposal, is placed in containers that prevent the dispersion of beryllium dust and that are labeled in accordance with § 850.38 of this part; and

(2) Inform organizations that launder or clean DOE beryllium-contaminated protective clothing or equipment that exposure to beryllium is potentially harmful, and that clothing and equipment should be laundered or cleaned in a manner prescribed by the responsible employer to prevent the release of airborne beryllium.

#### **§ 850.30 Housekeeping.**

(a) Where beryllium is present in operational areas of DOE facilities, the responsible employer must conduct routine surface sampling to determine housekeeping conditions. Surfaces contaminated with beryllium dusts and waste must not exceed a removable contamination level of  $3 \mu\text{g}/100 \text{ cm}^2$  during non-operational periods. This sampling would not include the interior of installed closed systems such as enclosures, glove boxes, chambers, or ventilation systems.

(b) When cleaning floors and surfaces in areas where beryllium is present at DOE facilities, the responsible employer must clean beryllium-contaminated floors and surfaces using a wet method, vacuuming or other cleaning methods, such as sticky tack cloths, that avoid the production of airborne dust. Compressed air or dry methods must not be used for such cleaning.

(c) The responsible employer must equip the portable or mobile vacuum units that are used to clean beryllium-contaminated areas with HEPA filters,

and change the filters as often as needed to maintain their capture efficiency.

(d) The responsible employer must ensure that the cleaning equipment that is used to clean beryllium-contaminated surfaces is labeled, controlled, and not used for non-hazardous materials.

#### **§ 850.31 Release criteria.**

(a) The responsible employer must clean beryllium-contaminated equipment and other items to the lowest contamination level practicable, but not to exceed the levels established in paragraphs (b) and (c) of this section, and label the equipment or other items, before releasing them to the general public or a DOE facility for non-beryllium use, or to another facility for work involving beryllium.

(b) Before releasing beryllium-contaminated equipment or other items to the general public or for use in a non-beryllium area of a DOE facility, the responsible employer must ensure that:

(1) The removable contamination level of equipment or item surfaces does not exceed the higher of  $0.2 \mu\text{g}/100 \text{ cm}^2$  or the concentration level of beryllium in soil at the point of release, whichever is greater;

(2) The equipment or item is labeled in accordance with § 850.38(b); and

(3) The release is conditioned on the recipient's commitment to implement controls that will prevent foreseeable beryllium exposure, considering the nature of the equipment or item and its future use and the nature of the beryllium contamination.

(c) Before releasing beryllium-contaminated equipment or other items to another facility performing work with beryllium, the responsible employer must ensure that:

(1) The removable contamination level of equipment or item surfaces does not exceed  $3 \mu\text{g}/100 \text{ cm}^2$ ;

(2) The equipment or item is labeled in accordance with § 850.38(b); and

(3) The equipment or item is enclosed or placed in sealed, impermeable bags or containers to prevent the release of beryllium dust during handling and transportation.

#### **§ 850.32 Waste disposal.**

(a) The responsible employer must control the generation of beryllium-containing waste, and beryllium-contaminated equipment and other items that are disposed of as waste, through the application of waste minimization principles.

(b) Beryllium-containing waste, and beryllium-contaminated equipment and other items that are disposed of as waste, must be disposed of in sealed, impermeable bags, containers, or

enclosures to prevent the release of beryllium dust during handling and transportation. The bags, containers, and enclosures that are used for disposal of beryllium waste must be labeled according to § 850.38.

#### § 850.33 Beryllium emergencies.

(a) The responsible employer must comply with 29 CFR 1910.120(l) for handling beryllium emergencies related to decontamination and decommissioning operations.

(b) The responsible employer must comply with 29 CFR 1910.120(q) for handling beryllium emergencies related to all other operations.

#### § 850.34 Medical surveillance.

(a) *General.* (1) The responsible employer must establish and implement a medical surveillance program for beryllium-associated workers who voluntarily participate in the program.

(2) The responsible employer must designate a Site Occupational Medical Director (SOMD) who is responsible for administering the medical surveillance program.

(3) The responsible employer must ensure that the medical evaluations and procedures required by this section are performed by, or under the supervision of, a licensed physician who is familiar with the health effects of beryllium.

(4) The responsible employer must establish, and maintain, a list of beryllium-associated workers who may be eligible for protective measures under this part. The list must be:

(i) Based on the hazard assessment, exposure records, and other information regarding the identity of beryllium-associated workers; and

(ii) Adjusted at regular intervals based on periodic evaluations of beryllium-associated workers performed under paragraph (b)(2) of this section;

(5) The responsible employer must provide the SOMD with the information needed to operate and administer the medical surveillance program, including the:

(i) List of beryllium-associated workers required by paragraph (a)(4) of this section;

(ii) Baseline inventory;

(iii) Hazard assessment and exposure monitoring data;

(iv) Identity and nature of activities or operations on the site that are covered under the CBDPP, related duties of beryllium-associated workers; and

(v) Type of personal protective equipment used.

(6) The responsible employer must provide the following information to the SOMD and the examining physician:

(i) A copy of this rule and its preamble;

(ii) A description of the worker's duties as they pertain to beryllium exposure;

(iii) Records of the worker's beryllium exposure; and

(iv) A description of the personal protective and respiratory protective equipment used by the worker in the past, present, or anticipated future use.

(b) *Medical evaluations and procedures.* The responsible employer must provide, to beryllium-associated workers who voluntarily participate in the medical surveillance program, the medical evaluations and procedures required by this section at no cost and at a time and place that is reasonable and convenient to the worker.

(1) *Baseline medical evaluation.* The responsible employer must provide a baseline medical evaluation to beryllium-associated workers. This evaluation must include:

(i) A detailed medical and work history with emphasis on past, present, and anticipated future exposure to beryllium;

(ii) A respiratory symptoms questionnaire;

(iii) A physical examination with special emphasis on the respiratory system, skin and eyes;

(iv) A chest radiograph (posterior-anterior, 14 x 17 inches) interpreted by a National Institute for Occupational Safety and Health (NIOSH) B-reader of pneumoconiosis or a board-certified radiologist (unless a baseline chest radiograph is already on file);

(v) Spirometry consisting of forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV1);

(vi) A Be-LPT; and

(vii) Any other tests deemed appropriate by the examining physician for evaluating beryllium-related health effects.

(2) *Periodic evaluation.* (i) The responsible employer must provide to beryllium workers a medical evaluation annually, and to other beryllium-associated workers a medical evaluation every three years. The periodic medical evaluation must include:

(A) A detailed medical and work history with emphasis on past, present, and anticipated future exposure to beryllium;

(B) A respiratory symptoms questionnaire;

(C) A physical examination with emphasis on the respiratory system;

(D) A Be-LPT; and

(E) Any other medical evaluations deemed appropriate by the examining physician for evaluating beryllium-related health effects.

(ii) The responsible employer must provide to beryllium-associated workers a chest radiograph every five years.

(3) *Emergency evaluation.* The responsible employer must provide a medical evaluation as soon as possible to any worker who may have been exposed to beryllium because of a beryllium emergency. The medical evaluation must include the requirements of paragraph (b)(2) of this section.

(c) *Multiple physician review.* The responsible employer must establish a multiple physician review process for beryllium-associated workers that allows for the review of initial medical findings, determinations, or recommendations from any medical evaluation conducted pursuant to paragraph (b) of this section.

(1) If the responsible employer selects the initial physician to conduct any medical examination or consultation provided to a beryllium-associated worker, the worker may designate a second physician to:

(i) Review any findings, determinations, or recommendations of the initial physician; and

(ii) Conduct such examinations, consultations and laboratory tests, as the second physician deems necessary to facilitate this review.

(2) The responsible employer must promptly notify a beryllium-associated worker in writing of the right to seek a second medical opinion after the initial physician provided by the responsible employer conducts a medical examination or consultation.

(3) The responsible employer may condition its participation in, and payment for, multiple physician review upon the beryllium-associated worker doing the following within fifteen (15) days after receipt of the notice, or receipt of the initial physician's written opinion, whichever is later:

(i) Informing the responsible employer in writing that he or she intends to seek a second medical opinion; and

(ii) Initiating steps to make an appointment with a second physician.

(4) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the responsible employer and the beryllium-associated worker must make efforts to encourage and assist the two physicians to resolve any disagreement.

(5) If, despite the efforts of the responsible employer and the beryllium-associated worker, the two physicians are unable to resolve their disagreement, then the responsible employer and the worker, through their respective physicians, must designate a third physician to:

(i) Review any findings, determinations, or recommendations of the other two physicians; and

(ii) Conduct such examinations, consultations, laboratory tests, and consultations with the other two physicians, as the third physician deems necessary to resolve the disagreement among them.

(6) The SOMD must act consistently with the findings, determinations, and recommendations of the third physician, unless the SOMD and the beryllium-associated worker reach an agreement that is consistent with the recommendations of at least one of the other two physicians.

(d) *Alternate physician determination.* The responsible employer and the beryllium-associated worker or the worker's designated representative may agree upon the use of any alternate form of physician determination in lieu of the multiple physician review process provided by paragraph (c) of this section, so long as the alternative is expeditious and at least as protective of the worker.

(e) *Written medical opinion and recommendation.* (1) Within two weeks of receipt of results, the SOMD must provide to the responsible employer a written, signed medical opinion for each medical evaluation performed on each beryllium-associated worker. The written opinion must take into account the findings, determinations and recommendations of the other examining physicians who may have examined the beryllium-associated worker. The SOMD's opinion must contain:

(i) The diagnosis of the worker's condition relevant to occupational exposure to beryllium, and any other medical condition that would place the worker at increased risk of material impairment to health from further exposure to beryllium;

(ii) Any recommendation for removal of the worker from DOE beryllium activities, or limitation on the worker's activities or duties or use of personal protective equipment, such as a respirator; and

(iii) A statement that the SOMD or examining physician has clearly explained to the worker the results of the medical evaluation, including all tests results and any medical condition related to beryllium exposure that requires further evaluation or treatment.

(2) The SOMD's written medical opinion must not reveal specific records, findings, and diagnoses that are not related to medical conditions that may be affected by beryllium exposure.

(f) *Information provided to the beryllium-associated worker.* (1) The

SOMD must provide each beryllium-associated worker with a written medical opinion containing the results of all medical tests or procedures, an explanation of any abnormal findings, and any recommendation that the worker be referred for additional testing for evidence of CBD, within 10 working days after the SOMD's receipt of the results of the medical tests or procedures.

(2) The responsible employer must, within 30 days after a request by a beryllium-associated worker, provide the worker with the information the responsible employer is required to provide the examining physician under paragraph (a)(6) of this section.

(g) *Reporting.* The responsible employer must report on the applicable OSHA reporting form beryllium sensitization, CBD, or any other abnormal condition or disorder of workers caused or aggravated by occupational exposure to beryllium.

(h) *Data analysis.* (1) The responsible employer must routinely and systematically analyze medical, job, and exposure data with the aim of identifying individuals or groups of individuals potentially at risk for CBD and working conditions that are contributing to that risk.

(2) The responsible employer must use the results of these analyses to identify additional workers to whom the responsible employer must provide medical surveillance and to determine the need for additional exposure controls.

#### **§ 850.35 Medical removal.**

(a) *Medical removal protection.* The responsible employer must offer a beryllium-associated worker medical removal from exposure to beryllium if the SOMD determines in a written medical opinion that it is medically appropriate to remove the worker from such exposure. The SOMD's determination must be based on one or more positive Be-LPT results, chronic beryllium disease diagnosis, an examining physician's recommendation, or any other signs or symptoms that the SOMD deems medically sufficient to remove a worker.

(1) *Temporary removal pending final medical determination.* The responsible employer must offer a beryllium-associated worker temporary medical removal from exposure to beryllium on each occasion that the SOMD determines in a written medical opinion that the worker should be temporarily removed from such exposure pending a final medical determination of whether the worker should be removed permanently.

(i) In this section, "final medical determination" means the outcome of the multiple physician review process or the alternate medical determination process provided for in paragraphs (c) and (d) of § 850.34.

(ii) If a beryllium-associated worker is temporarily removed from beryllium exposure pursuant to this section, the responsible employer must transfer the worker to a comparable job for which the worker is qualified (or for which the worker can be trained in a short period) and where beryllium exposures are as low as possible, but in no event at or above the action level.

(iii) The responsible employer must maintain the beryllium-associated worker's total normal earnings, seniority, and other worker rights and benefits as if the worker had not been removed.

(iv) If there is no such job available, the responsible employer must provide to the beryllium-associated worker the medical removal protection benefits specified in paragraph (b)(2) of this section, until a job becomes available or for one year, whichever comes first.

(2) *Permanent medical removal.* (i) The responsible employer must offer a beryllium-associated worker permanent medical removal from exposure to beryllium if the SOMD determines in a written medical opinion that the worker should be permanently removed from exposure to beryllium.

(ii) If a beryllium-associated worker is removed permanently from beryllium exposure based on the SOMD's recommendation pursuant to this section, the responsible employer must provide the worker the medical removal protection benefits specified in paragraph (b) of this section.

(3) *Worker consultation before temporary or permanent medical removal.* If the SOMD determines that a beryllium-associated worker should be temporarily or permanently removed from exposure to beryllium, the SOMD must:

(i) Advise the beryllium-associated worker of the determination that medical removal is necessary to protect the worker's health;

(ii) Provide the beryllium-associated worker with a copy of this rule and its preamble, and any other information the SOMD deems necessary on the risks of continued exposure to beryllium and the benefits of removal;

(iii) Provide the beryllium-associated worker the opportunity to have any questions concerning medical removal answered; and

(iv) Obtain the beryllium-associated worker's signature acknowledging that the worker has been advised to accept

medical removal from beryllium exposure as provided in this section, and has been provided with the information specified in this paragraph, on the benefits of removal and the risks of continued exposure to beryllium.

(4) *Return to work after medical removal.* (i) The responsible employer, subject to paragraph (a)(4)(ii) of this section, must not return a beryllium-associated worker who has been permanently removed under this section to the worker's former job status unless the SOMD first determines in a written medical opinion that continued medical removal is no longer necessary to protect the worker's health.

(ii) Notwithstanding paragraph (a)(4)(i) of this section, if, in the SOMD's opinion, continued exposure to beryllium will not pose an increased risk to the beryllium-associated worker's health, and medical removal is an inappropriate remedy in the circumstances, the SOMD must fully discuss these matters with the worker and then, in a written determination, may authorize the responsible employer to return the worker to his or her former job status. Thereafter, the returned beryllium-associated worker must continue to be provided with medical surveillance under § 850.34 of this part.

(b) *Medical removal protection benefits.* (1) If a beryllium-associated worker has been permanently removed from beryllium exposure pursuant to paragraph (a)(2) of this section, the responsible employer must provide the beryllium-associated worker:

(i) The opportunity to transfer to another position which is available, or later becomes available, for which the beryllium-associated worker is qualified (or for which the worker can be trained in a short period) and where beryllium exposures are as low as possible, but in no event at or above the action level; or

(ii) If the beryllium-associated worker cannot be transferred to a comparable job where beryllium exposures are below the action level, a maximum of 2 years of permanent medical removal protection benefits (specified in paragraph (b)(2) of this section).

(2) If required by this section to provide medical removal protection benefits, the responsible employer must maintain the removed worker's total normal earnings, seniority and other worker rights and benefits, as though the worker had not been removed.

(3) If a removed beryllium-associated worker files a claim for workers' compensation payments for a beryllium-related disability, then the responsible employer must continue to provide medical removal protection benefits pending disposition of the claim. The

responsible employer must receive no credit for the workers' compensation payments received by the worker for treatment related expenses.

(4) The responsible employer's obligation to provide medical removal protection benefits to a removed beryllium-associated worker is reduced to the extent that the worker receives compensation for earnings lost during the period of removal either from a publicly- or employer-funded compensation program, or from employment with another employer made possible by virtue of the worker's removal.

(5) For the purposes of this section, the requirement that a responsible employer provide medical removal protection benefits is not intended to expand upon, restrict, or change any rights to a specific job classification or position under the terms of an applicable collective bargaining agreement.

(6) The responsible employer may condition the provision of medical removal protection benefits upon the beryllium-associated worker's participation in medical surveillance provided in accordance with § 850.34 of this part.

#### § 850.36 Medical consent.

(a) The responsible employer must provide each beryllium-associated worker with a summary of the medical surveillance program established in § 850.34 at least one week before the first medical evaluation or procedure or at any time requested by the worker. This summary must include:

(1) The type of data that will be collected in the medical surveillance program;

(2) How the data will be collected and maintained;

(3) The purpose for which the data will be used; and

(4) A description of how confidential data will be protected.

(b) Responsible employers must also provide each beryllium-associated worker with information on the benefits and risks of the medical tests and examinations available to the worker at least one week prior to any such examination or test, and an opportunity to have the worker's questions answered.

(c) The responsible employer must have the SOMD obtain a beryllium-associated worker's signature on the informed consent form found in Appendix A to this part, before performing medical evaluations or any tests.

#### § 850.37 Training and counseling.

(a) The responsible employer must develop and implement a beryllium training program and ensure participation for:

(1) Beryllium-associated workers;

(2) All other individuals who work at a site where beryllium activities are conducted.

(b) The training provided for workers identified in paragraph (a)(1) of this section, must:

(1) Be in accordance with 29 CFR 1910.1200, Hazard Communication;

(2) Include the contents of the CBDPP; and

(3) Include potential health risks to beryllium worker family members and others who may come in contact with beryllium on beryllium workers or beryllium workers' personal clothing or other personal items as the result of a beryllium control failure at a DOE facility.

(c) The training provided for workers identified in paragraph (a)(2) of this section must consist of general awareness about beryllium hazards and controls.

(d) The responsible employer must provide the training required by this section before or at the time of initial assignment and at least every two years thereafter.

(e) The employer must provide retraining when the employer has reason to believe that a beryllium worker lacks the proficiency, knowledge, or understanding needed to work safely with beryllium, including at least the following situations:

(1) To address any new beryllium hazards resulting from a change to operations, procedures, or beryllium controls about which the beryllium worker was not previously trained; and

(2) If a beryllium worker's performance involving beryllium work indicates that the worker has not retained the requisite proficiency.

(f) The responsible employer must develop and implement a counseling program to assist beryllium-associated workers who are diagnosed by the SOMD to be sensitized to beryllium or to have CBD. This counseling program must include communicating with beryllium-associated workers concerning:

(1) The medical surveillance program provisions and procedures;

(2) Medical treatment options;

(3) Medical, psychological, and career counseling;

(4) Medical benefits;

(5) Administrative procedures and workers rights under applicable Workers' Compensation laws and regulations;

(6) Work practice procedures limiting beryllium-associated worker exposure to beryllium; and

(7) The risk of continued beryllium exposure after sensitization.

#### **§ 850.38 Warning signs and labels.**

(a) *Warning signs.* The responsible employer must post warning signs at each access point to a regulated area with the following information:

DANGER  
BERYLLIUM CAN CAUSE LUNG  
DAMAGE  
CANCER HAZARD  
AUTHORIZED PERSONNEL ONLY

(b) *Warning labels.* (1) The responsible employer must affix warning labels to all containers of beryllium, beryllium compounds, or beryllium-contaminated clothing, equipment, waste, scrap, or debris.

(2) Warning labels must contain the following information:

DANGER  
CONTAMINATED WITH BERYLLIUM  
DO NOT REMOVE DUST BY BLOWING  
OR SHAKING  
CANCER AND LUNG DISEASE  
HAZARD

(c) Warning signs and labels must be in accordance with 29 CFR 1910.1200, Hazard Communication.

#### **§ 850.39 Recordkeeping and use of information.**

(a) The responsible employer must establish and maintain accurate records of all beryllium inventory information, hazard assessments, exposure measurements, exposure controls, and medical surveillance.

(b) Heads of DOE Departmental Elements must:

(1) Designate all record series as required under this rule as agency records and, therefore, subject to all applicable agency records management and access laws; and

(2) Ensure that these record series are retained for a minimum of seventy-five years.

(c) The responsible employer must convey to DOE or its designee all record series required under this rule if the employer ceases to be involved in the CBDPP.

(d) The responsible employer must link data on workplace conditions and health outcomes in order to establish a basis for understanding the beryllium health risk.

(e) The responsible employer must ensure the confidentiality of all work-related records generated under this rule by ensuring that:

(1) All records that are transmitted to other parties do not contain names, social security numbers or any other

variables, or combination of variables, that could be used to identify particular individuals; and

(2) Individual medical information generated by the CBDPP is:

(i) Either included as part of the worker's site medical records and maintained by the SOMD, or is maintained by another physician designated by the responsible employer;

(ii) Maintained separately from other records; and

(iii) Used or disclosed by the responsible employer only in conformance with any applicable requirements imposed by the Americans with Disabilities Act, the Privacy Act of 1974, the Freedom of Information Act, and any other applicable law.

(f) The responsible employer must maintain all records required by this part in current and accessible electronic systems, which include the ability readily to retrieve data in a format that maintains confidentiality.

(g) The responsible employer must transmit all records generated as required by this rule, in a format that protects the confidentiality of individuals, to the DOE Assistant Secretary for Environment, Safety and Health on request.

(h) The responsible employer must semi-annually transmit to the DOE Office of Epidemiologic Studies within the Office of Environment, Safety and Health an electronic registry of beryllium-associated workers that protects confidentiality, and the registry must include, but is not limited to, a unique identifier, date of birth, gender, site, job history, medical screening test results, exposure measurements, and results of referrals for specialized medical evaluations.

#### **§ 850.40 Performance feedback.**

(a) The responsible employer must conduct periodic analyses and assessments of monitoring activities, hazards, medical surveillance, exposure reduction and minimization, and occurrence reporting data.

(b) To ensure that information is available to maintain and improve all elements of the CBDPP continuously, the responsible employer must give results of periodic analyses and assessments to the line managers, planners, worker protection staff, workers, medical staff, and labor organizations representing beryllium-associated workers who request such information.

#### **Appendix A to Part 850—Chronic Beryllium Disease Prevention Program Informed Consent Form**

I, \_\_\_\_\_ have carefully read and understand the attached information about the Be-LPT and other medical tests. I have had the opportunity to ask any questions that I may have had concerning these tests.

I understand that this program is voluntary and I am free to withdraw at any time from all or any part of the medical surveillance program. I understand that the tests are confidential, but not anonymous. I understand that if the results of any test suggest a health problem, the examining physician will discuss the matter with me, whether or not the result is related to my work with beryllium. I understand that my employer will be notified of my diagnosis only if I have a beryllium sensitization or chronic beryllium disease. My employer will not receive the results or diagnoses of any health conditions not related to beryllium exposure.

I understand that, if the results of one or more of these tests indicate that I have a health problem that is related to beryllium, additional examinations will be recommended. If additional tests indicate I do have a beryllium sensitization or CBD, the Site Occupational Medical Director may recommend that I be removed from working with beryllium. If I agree to be removed, I understand that I may be transferred to another job for which I am qualified (or can be trained for in a short period) and where my beryllium exposures will be as low as possible, but in no case above the action level. I will maintain my total normal earnings, seniority, and other benefits for up to two years if I agree to be permanently removed.

I understand that if I apply for another job or for insurance, I may be requested to release my medical records to a future employer or an insurance company.

I understand that my employer will maintain all medical information relative to the tests performed on me in segregated medical files separate from my personnel files, treated as confidential medical records, and used or disclosed only as provided by the Americans with Disability Act, the Privacy Act of 1974, or as required by a court order or under other law.

I understand that the results of my medical tests for beryllium will be included in the Beryllium Registry maintained by DOE, and that a unique identifier will be used to maintain the confidentiality of my medical information. Personal identifiers will not be included in any reports generated from the DOE Beryllium Registry. I understand that the results of my tests and examinations may be published in reports or presented at meetings, but that I will not be identified.

I consent to having the following medical evaluations:

/ / Physical examination concentrating on  
my lungs and breathing  
/ / Chest X-ray  
/ / Spirometry (a breathing test)  
/ / Blood test called the beryllium-induced  
lymphocyte proliferation test or Be-LPT  
/ / Other test(s). Specify:

Signature of Participant:	concerning the Be-LPT, physical examination, and other medical testing as well as the implications of those tests.	Dated:
Date:	Name of Examining Physician:	[FR Doc. 99-31181 Filed 12-6-99; 8:45 am]
I have explained and discussed any questions that the employee expressed	Signature of Examining Physician:	<b>BILLING CODE 6450-01-P</b>

14 CFR Part 65

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Wednesday  
December 8, 1999

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**Part IV**

**Department of  
Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 65**

**Revision of Certification Requirements:  
Aircraft Dispatchers; Final Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration.****14 CFR Part 65****[Docket No. FAA-1998-4553; Amendment No.]****RIN 2120-AG04****Revision of Certification Requirements: Aircraft Dispatchers****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This final rule amends eligibility and certification requirements for aircraft dispatchers. The existing regulations prescribing these requirements do not reflect the significant technological advances that have occurred in the aviation industry and the enhancements in training and instructional methods that have affected all aircraft dispatchers. This final rule consolidates and clarifies eligibility, knowledge, experience, and skill requirements for aircraft dispatchers, enhances the technical capabilities of aircraft dispatchers, and increases the level of professionalism among aircraft dispatchers.

**EFFECTIVE DATES:** April 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** James E. Gardner, Air Transportation Division, Air Carrier Operations Branch, AFS-220, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9579.

**SUPPLEMENTARY INFORMATION:****Availability of Final Rules**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321-3339), the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512-1661), or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322-2722 or (202) 267-5948).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO's web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW.,

Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at <http://www.faa.gov> and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov

**Background**

In keeping with the FAA's policy of reviewing and updating regulations to ensure that they are consistent with changes in the aviation environment, the FAA, with the assistance of the Aviation Rulemaking Advisory Committee (ARAC), reviewed part 65, subpart C, and appendix A of 14 CFR part 65 that pertain to aircraft dispatchers. In the preceding 30 years, few changes have been made to the dispatcher certification requirements, although numerous technological advances in the aviation industry and concerns over changes in operational practices and training methods have occurred.

In October 1993, an industry task force concluded an initial investigation of part 65, subpart C. The task force's objective was to determine whether part 65, subpart C, needed to be updated, what specific sections required updating, and whether industry, training schools, and FAA examiners were of the same opinion. The task force was comprised of representatives of airlines, associations, unions, academia, and other interested parties. The Airline Dispatch Federation (ADF) coordinated these activities. The task force found that technology had outpaced the current regulations. The task force also found that various designated examiners and FAA regional offices were interpreting several of the regulations in a manner inconsistent with each other and FAA headquarters. The results of

this informal task force study were presented at several ADF quarterly meetings.

On September 27, 1993, the Transport Workers Union Local 542 of Euless, TX, petitioned the FAA to request a regulatory review of part 65, subpart C, and appendix A. On November 10, 1993, the FAA requested the ARAC to review the initial certification training requirements of aircraft dispatchers. The ARAC formed a "Dispatch Working Group" to complete this assignment (59 FR 3155, January 20, 1994). The ARAC tasked this working group to conduct a review of the certification requirements for aircraft dispatchers. On October 19, 1998, the FAA published a proposal as a result of the ARAC's recommendations (63 FR 55920). There has been only one substantive change from the NPRM. The FAA proposed to allow operating limitations on a dispatcher's certificate if the applicant was unable to read, speak, write, or understand the English language due to medical reasons. The FAA is not going forward with this proposal. For a more detailed discussion of this issue, see the Principal Issues section of the preamble. In addition, several editorial and clarifying changes have been made to the rule language proposed in the NPRM.

**General Discussion of the Amendments**

The amendments cover a broad range of issues affecting the certification of aircraft dispatchers. The amendments:

1. Establish a minimum age to be eligible to take the knowledge test required by § 65.55.
2. Update the experience requirements in § 65.57 for an aircraft dispatcher certificate.
3. Allow the equivalent experience finding under § 65.57(a)(4) to be made only by the Administrator.
4. Retain the current basic dispatch certificate without introducing a system of ratings or limitations.
5. Eliminate duplication of certain educational requirements by relocating them from current subpart C to appendix A.
6. Relocate information concerning initial and continued eligibility for dispatcher certification courses, training facilities, instruction, and records from appendix A to subpart C.
7. Add an "overview" paragraph to appendix A that contains general information about aircraft dispatcher training courses.
8. Revise appendix A to include a new training outline that adds new subjects, e.g., "emergency and abnormal procedure."
9. Eliminate sub-category training hour requirements from appendix A



while retaining total course hour requirements.

10. Introduce "human factors" training during initial certification.

11. Introduce in appendix A a training outline that allows training to change as technology changes, without the need for a rule change, by making the following changes:

(a) Stating the training outline in general terms so that future technological enhancements or changes in operational practices can be readily added.

(b) Linking appendix A to the Dispatch Practical Test Standards (PTS) guide, thus allowing training requirements to be revised.

### Principal Issues

#### *Revision of § 65.53 Eligibility Requirements*

Section 65.53 adds a minimum age requirement of 21 years to be eligible to take the knowledge test. The minimum age requirement to be eligible for an aircraft dispatcher certificate is still 23 years of age. The FAA added this provision to clear up confusion among training centers and to provide a standard policy. Currently, confusion among training centers exists when prospective dispatchers take both the knowledge and practical exams prior to reaching their 23rd birthday. Some training centers find this practice acceptable and delay certificate issuance until the age requirement is met. Other training centers find this practice unacceptable and do not allow an applicant to take the knowledge test until the applicant is 23 years of age. As a practical matter, adding a minimum age requirement of 21 years is not a substantive change under § 65.55(b) since a passing grade on a written test is only valid for 24 months after the date the test is given.

In addition, the term "knowledge test" replaces "written test" because the term "knowledge test" is a more inclusive term, referring to either a test administered with pencil and paper or by computer.

Finally, the FAA is adding a requirement and eliminating an exception to the English language requirements for flight dispatchers. The FAA has determined, for safety concerns, that operations in the National Airspace System (NAS) require a basic command of the English language. Therefore, it has added the requirement that, to be eligible for a dispatcher certificate, a person must be able to write English in addition to the current requirements of reading, speaking, and understanding the

English language. The NPRM also proposed to permit limitations to be placed on a dispatcher certificate if a medical condition prevented the applicant from reading, writing, speaking, or understanding the English language. The FAA is not going forward with this proposal because it has determined that a dispatcher cannot perform safely without being able to read, write, speak, and understand the English language.

#### *Revision of § 65.57 Experience or Training Requirements*

Section 65.57 is reorganized and retitled to provide more clarity. In the past, there has been some confusion regarding whether experience requirements can be combined with training requirements or whether a person must meet the experience requirements and accomplish the training requirements. This final rule retitles this section and separates the experience requirements from the training requirements to make it clear that a person applying for an aircraft dispatcher certificate must meet either the experience requirements or the training requirements. In addition, this final rule reorganizes the experience requirements by separating military experience, part 121 air carrier operations experience (14 CFR part 121), and other aircraft operations experience. As a result, specific experience is delineated to the appropriate category, making the experience requirements easier to understand.

Further, air carrier operations are changed from "scheduled air carrier" to "operations conducted under part 121 of this chapter" to ensure that experience is verifiable and applicable. Experience as a radio operator is no longer accepted because the FAA has determined that radio operators do not have sufficient experience in such subject areas as meteorology, weight and balance, emergency procedures, applicable regulations, aeronautical charts, and flight planning. Also, the experience for air traffic controllers is expanded to include "Flight Service Specialist." Flight Service Specialists are required to have knowledge and perform in the following areas: meteorology, air traffic control, pilot briefings, flight planning, aeronautical charts, and emergency procedures. Accordingly, the FAA has determined that the experience gained as a Flight Service Specialist is applicable to experience needed as an aircraft dispatcher.

In addition, § 65.57(a)(4) in this final rule states that the Administrator can

make a finding of equivalent experience. The NPRM used the term "Administrator's representative", and specified that such a representative must be a certificated aircraft dispatcher. The FAA modified the language to use the term "Administrator" since the term "Administrator's representative" is too inclusive; it includes designated aircraft dispatcher examiners (as authorized under part 183 of this chapter) but does not include FAA inspectors. In addition, it is redundant to state that the Administrator's representative must hold an aircraft dispatcher certificate since this is already required by internal FAA Orders. The requirements for FAA personnel are handled through internal Orders as well, and changes may be made regarding FAA inspectors and the requirement to hold an aircraft dispatcher certificate if the FAA determines such a requirement is needed.

Finally, this section changes the number of years of experience an assistant aircraft dispatcher may use to meet the experience requirements for an aircraft dispatcher certificate. Under the current rule, an applicant for an aircraft dispatcher certificate may meet the experience requirements for an aircraft dispatcher certificate by demonstrating that he or she works as an assistant in dispatching aircraft while under the direct supervision of a certificated aircraft dispatcher for a total of at least one out of the two years before the date he or she applies for the certificate. Under this amendment, the number of years of assistant aircraft dispatcher experience changes to two out of the last three years before the date the applicant applies for the certificate. This change standardizes the number of years of experience required for all accepted areas of experience and gives the assistant aircraft dispatcher an additional opportunity to gain experience in a variety of program areas similar to those areas taught in certificated aircraft dispatcher courses. The ARAC recommended the changes described above to the current experience requirements because of its determination that only the proposed experience requirements warrant being considered equivalent to the instruction received in an approved aircraft dispatcher course. In addition, the FAA is clarifying the language in paragraph (b) and codifying existing practice regarding training requirements.

#### *Knowledge and Skill Requirements*

Under the current regulations for aircraft dispatchers, information contained in the knowledge and skill

sections (§§ 65.55 and 65.59) was duplicated in the appendix to part 65 (Aircraft Dispatcher Courses). This final rule removes this redundancy by moving detailed training requirements set out in current §§ 65.55(a)(1) through (8) and 65.59(a) through (e) to appendix A. This reorganization makes the rules clearer and easier to follow.

#### *Realignment of Regulations and Training Material*

The requirements for obtaining approval of an aircraft dispatcher certification course covering required training facilities, instruction, and records that were at the end of appendix A are now included in subpart C. This material is relocated to §§ 65.61, 65.63, 65.65, 65.67, and 65.70. Since this material contains what are in fact eligibility requirements, it is more appropriate in the text of the regulation than in an appendix. Sections 65.63, 65.65, 65.67, and 65.70 are new.

As previously mentioned, detailed training material from the Knowledge and Skill sections of part 65 that describe course curriculum are being moved into appendix A. With this realignment, all eligibility requirements are contained in subpart C and all course related training material in appendix A. One exception is that the minimum number of 200 course hours is included in § 65.61(a) rather than in appendix A for clarification. Subcategory hour requirements have been eliminated so that an integrated training approach can be used more readily. This issue is discussed in more detail in the "Elimination of Minimum Training Times for Subcategories" section of the preamble.

#### *Appendix A Revision*

As mentioned above, an appendix introductory overview has been added to Appendix A and contains information on course topics, use of state of the art technologies and techniques, and air carrier specific training. While all of the listed material must be taught, the course order is flexible and an integrated training approach may be used. In the past, blocks of material were taught separately, yet the material was interrelated, so an integrated training approach is desirable.

Appendix A is completely revised based on technological advances from the past 30 years and those that may be anticipated in the future. Specific changes are discussed in detail below in the "section by section" analysis.

#### *Elimination of Minimum Training Times for Subcategories*

This final rule provides for a minimum hour content of 200 training hours (the previous minimum was 198 hours). The 2 hour increase in training accommodates the addition of new topics, e.g., human factors training. Appendix A is divided into eight main subject areas but does not include a minimum hour requirement for each subject area as it did in the past. By eliminating the subcategory hour requirement, an integrated training approach can be used more readily. This also allows training centers to change curriculum as needs change in the future.

#### *Human Factors Training*

An innovative concept in initial certification training for aircraft dispatchers includes the introduction of human factors training. This type of training is based on a number of human performance variables, such as communication, decision-making, teamwork, and leadership. Human factors training for cockpit crewmember personnel has been conducted for years and has recently been made mandatory for dispatchers under 14 CFR part 121 as well as for flight crewmembers under 14 CFR parts 61 and 121 (see "Air Carrier and Commercial Operator Training Programs," 60 FR 65940, December 20, 1995). Today, human factors experts agree that the cockpit crewmember is just one part of a team. Experts agree that Crew Resource Management (CRM) training is important because it includes all members of the operational team (see Advisory Circular (AC) 121-32, "Dispatch Resource Management Training" and AC 120-51B, as amended, "Crew Resource Management Training"). Rather than wait until the dispatcher has begun actively dispatching flights, it is better to begin human factors training during the certification process. This provides maximum benefit and retention level to the airman prior to actively working flights. Of central importance to human factors training are communications and decision making. Aircraft dispatchers are the communications nexus in the air transportation system. Dispatchers routinely communicate with and obtain information from over 25 groups of aviation professionals that have responsibility for some portion of the air transportation system. Then dispatchers must analyze, prioritize, and disseminate information as appropriate. Much of this information can be considered critical to the safety of flight.

Therefore, the FAA has determined that human factors training should be required and conducted during initial certification for maximum air transportation safety.

#### *Basic Certificate vs. Endorsements and Ratings*

The ARAC, after an extensive analysis, determined that it would be better to retain the current certificate structure without introducing a system of ratings or endorsements. The ARAC discussed adding an "international" endorsement; however, this was deemed unwarranted due to the complexity and unique qualities of international operators. The ARAC believed, and the FAA concurred, that airline or equipment-specific training was best left to the airlines so that it could be tailored to specific requirements. Examples of specific types of training include twin engine extended range operations, operations in areas of magnetic unreliability, and high altitude operations at several South American airports.

#### *Future Technological Advancements*

Technology and new operational practices often outpace training and the regulations associated with training. This subpart, for example, has not been updated for over 30 years. With this in mind the ARAC's Dispatch Working Group explored ways to write a training outline that would not quickly become obsolete.

(1) General vs. Specific. The training outline in appendix A is written in general terms. If very specific terms were used in the representation of technology it could become obsolete within several years. Specific automated observations currently include AWOS (automated weather observing system), ASOS (automated surface observing system), etc. These observations may not be used in the future; therefore, the training outline lists "automated" weather observations.

(2) Practical Test Standards Guide (PTS). Appendix A contains language that references the PTS guide prepared and published by the FAA. Through the PTS guide, the FAA is able to give examiners general guidance on which subjects are appropriate for testing. From the PTS guide, an examiner is able to determine those specific subject areas that are appropriate for testing the knowledge and skills of a candidate for an aircraft dispatcher certificate. Since it is virtually impossible to theorize what technological advancements are in store for the aviation community in the future and to reflect those advancements specifically in part 65, subpart C and

appendix A, it is desirable to link the training outline in appendix A to a document like the PTS guide that can be easily revised but that is exposed to public review and participation.

### Section-by-Section Analysis

#### *Part 65—Certification: Airmen Other Than Flight Crewmembers*

The revision to part 65, subpart C, updates eligibility, knowledge, experience and skill requirements for initial certification of aircraft dispatchers. Regulatory material is revised and relocated from appendix A to subpart C.

#### Section 65.51 Certificate Required

Section 65.51 contains the basic requirements for an aircraft dispatcher certificate and also requires each person who holds an aircraft dispatcher certificate to present it for inspection upon request of the Administrator or other authorized official. Minor editorial changes have been made to the current rule language.

#### Section 65.53 Eligibility Requirements: General

Section 65.53 contains eligibility requirements for aircraft dispatcher certification. This final rule amends § 65.53 by: (1) Establishing a minimum age requirement of 21 years for taking the knowledge test; and (2) adding a requirement and eliminating an exception to the English language requirements. These changes are more fully discussed above under the Principal Issues portion of this preamble.

#### Section 65.55 Knowledge Requirements

In § 65.55, the term “written test” is replaced with the term “knowledge test.” The FAA has determined the term “knowledge test” is a more inclusive term, referring to either tests administered with pencil and paper or by computer. This change is also consistent with changes that have been made in other parts of this chapter (*e.g.*, 14 CFR part 61).

In addition, general aeronautical knowledge areas are listed. This is a change from the NPRM, but is consistent with other parts of this chapter (*e.g.*, 14 CFR part 61). This final rule eliminates redundancy that is in §§ 65.55(a)(1) through (8) and 65.59(a) through (e) of the current rule. Also, the detailed subject matter is described in more general terms, allowing training to change as technology changes without the need for a rule change.

Finally, paragraph (b) was modified from the NPRM to clarify the FAA’s intent.

#### Section 65.57 Experience or Training Requirements

As previously discussed under the Principal Issues section of this preamble, this final rule reorganizes and retitles this section.

#### Section 65.59 Skill Requirements

The current regulation outlines specific topics and publications to be covered during the practical test. However, under this final rule, specific topics are deleted to reduce redundancy within other sections and the appendix. Instead, § 65.59 states that the test must be based on the Aircraft Dispatcher Practical Test Standards published by the FAA on the items outlined in appendix A of part 65. In addition, the language in the current rule regarding one type of large aircraft was inadvertently omitted from the proposed rule. The language has been added back in this final rule. Finally, § 65.59 in this final rule states that an applicant for an aircraft dispatcher certificate must pass a practical test given by the Administrator. The NPRM used the term “Administrator’s representative”, and specified that such a representative must be a certificated aircraft dispatcher. The FAA modified the language to use the term “Administrator” since the term “Administrator’s representative” is too inclusive; it includes designated aircraft dispatcher examiners (as authorized under part 183 of this chapter) but does not include FAA inspectors. In addition, it is redundant to state that the Administrator’s representative must hold an aircraft dispatcher certificate since this is already required by internal FAA Orders.

#### Section 65.61 Aircraft Dispatcher Certification Courses: Content and Minimum Hours

The current § 65.61 contains the general requirements for obtaining approval of an aircraft dispatcher certification course. Under this final rule, these requirements are divided between § 65.61(a) and § 65.63(a).

Section 65.61 also includes the minimum 200 hours of instruction as proposed. Under the current regulations, the minimum hours are contained in appendix A on a subject-by-subject basis. This issue is discussed more fully under the Principal Issues section of this preamble.

Under this final rule, § 65.61(b) requires a course outline as does the current rule but, in addition, it requires

that the outline indicate the number of hours proposed for major topics and subtopics to be covered since these hours are no longer stated in appendix A. Section 65.61(c) also includes a provision, currently in appendix A, paragraph (a), that additional subject headings can be included, but that the hours proposed for any subjects not listed in appendix A must be in addition to the minimum 200 required hours of instruction.

This final rule amends § 65.61(d) by including a provision, currently in paragraph (f) of appendix A, that allows a student to receive credit for a portion of the required 200 hours of instruction by substituting previous experience or training. As is currently the case, this final rule requires that the basis for any allowance and the total hours credited must be incorporated in the student’s records.

Finally, the proposed introductory language in § 65.61 is being deleted in this final rule since the requirement is already contained in 14 CFR part 121, subpart P and is more appropriate for an operating rule.

#### Section 65.63 Aircraft Dispatcher Certification Courses: Application, Duration, and Other General Requirements

Section 65.63 is a new section that includes in paragraph (a) the requirement for a letter application currently contained in § 65.61 that are more appropriate for the operating rule. Under this final rule, a person is required to submit only two copies of the course outline, in place of the three copies currently required. The FAA has determined that three copies are not needed and that the requirement imposes an unnecessary economic cost on the person and an administrative burden on the FAA.

Section 65.63(b) contains the duration requirements and includes the current 24-month duration for FAA approval of an aircraft dispatcher certification course.

Section 65.65(c) contains the renewal requirements for an approved aircraft dispatcher certification course. The only substantive change from the current rule is that an application for renewal has to be submitted at least 30 days before the expiration date. Currently it can be submitted up to 60 days after the expiration date. This change is needed to prevent approval of a course from continuing beyond its expiration date. In addition, this section continues the 80 percent success rate requirement currently under Appendix A but applies the 80 percent rate over a 24 month

period that is consistent with § 141.5 (14 CFR 141.5).

Section 65.63(d) continues to contain the requirements for obtaining approval of course revisions.

Section 65.63(e) contains the provisions for withdrawal or cancellation of approval of an aircraft dispatcher certification course, whether at the FAA's or the operator's initiative. When a course approval is withdrawn or canceled, the operator is required to send to the FAA any records requested by the Administrator so that they are available if needed.

Sections 65.63(f) and (g) contain most of the current requirements that apply to changes in ownership, name, or location of an approved course. Two substantive changes from the current rule have been made. Currently, the section states that "approval of an aircraft dispatcher course may not be continued in effect after the course has changed ownership." Under this final rule, § 65.63(f) allows for continuation of approval after a change of ownership if application is made for an appropriate amendment to the approval and no change in the facilities, personnel, or approved aircraft dispatcher course is involved. The other change requires that the Administrator must be notified in writing within 10 days of any changes in ownership, name, or location. The current rule requires notification of a change in location "without delay." This change avoids differing interpretations of how much time is allowed.

In addition, § 65.63 has been reorganized from the NPRM for clarification and to make it consistent with other parts of 14 CFR (e.g., 14 CFR 141).

#### Section 65.65 Aircraft Dispatcher Certification Courses: Training Facilities

Section 65.65 is a new section that prescribes the training facilities necessary to operate an approved school. This section is based primarily on material that is provided for in appendix A. The section adds a requirement that the training facility must be located so that the students in that facility are not distracted by the instruction conducted in other rooms. This requirement aligns this section with part 141 of this chapter.

#### Section 65.67 Aircraft Dispatcher Certification Courses: Instruction

Section 65.67 is a new section that prescribes instruction requirements necessary to operate an approved school that are mostly based on material that is provided for in appendix A. The

maximum student-teacher ratio remains unchanged at 25 to 1.

#### Section 65.70 Aircraft Dispatcher Certification Courses: Records

Section 65.70 is a new section that prescribes recordkeeping requirements based on material currently provided for in appendix A. A change, however, allows schools to discard records after 3 years so that recordkeeping does not become a burden. This change could result in significant cost savings to dispatcher schools since a literal reading of the current regulations requires these records to be retained indefinitely.

#### Appendix A to Part 65—Aircraft Dispatcher Certification Courses

The overview paragraph introduces the specific minimum set of topics that must be covered in an aircraft dispatcher training course and contains general information about those courses.

The individual subject hourly requirements (e.g., Federal Aviation Regulations, 15 classroom hours; meteorology, 75 classroom hours) are eliminated, and in their place a total course-hour minimum is included in § 61.61(a) as discussed above.

A word-by-word comparison of new appendix A with current appendix A might make it appear that this regulation is adding to the subject areas to be covered. However, the FAA understands that as a practical matter, training schools, partially through the use of the PTS guide, are in fact covering the subject areas listed in the new requirements. In addition, by using modern teaching methods and training aids, it is possible to cover the proposed curriculum without an increase in overall teaching hours.

The new curriculum is considered necessary because of the important role of the aircraft dispatcher in maintaining safety of flight operations. The aircraft dispatcher and the pilot in command are jointly responsible for the authorization and control of a flight in accordance with applicable regulations and air carrier procedures. This responsibility extends from the preparation for a flight to its conclusion, and includes dealing with emergency situations.

Many of the dispatcher's tasks require familiarity in dealing with specific regulations and air carrier procedures. Others require exercising judgment to deal with unique aspects of a situation. Virtually all of these problem-solving activities require skill in working with the flight crew, Air Traffic Control, and members of the Air Carrier Operations Control and Maintenance staff.

#### Regulations

In addition to the parts currently covered (subpart C of part 65 and parts 25, 91, 121), a course has to cover parts 1, 61, 71, 139, and 175 of chapter I of 14 CFR as well as part 830 of the regulations of the National Transportation Safety Board, "Rules Pertaining to Aircraft Accidents, Incidents, Overdue Aircraft, and Safety Investigation." Another addition to appendix A training requirements is training on the "General Operating Manual," that is, training on the common features of a typical certificate holder's manual.

#### Meteorology

Meteorology is sub-divided into three subject headings: (1) Basic Weather Studies; (2) Weather, Analysis, and Forecasts; and (3) Weather Related Hazards. The subject of meteorology, due to its importance, is updated and expanded to provide greater detail for instructional guidance.

#### Navigation

Navigation is expanded to provide an introduction to international flight planning procedures and limitations.

#### Aircraft

Aircraft is updated to provide expanded systems training to ensure proper application of this knowledge.

#### Communications

Communications is expanded to include data link communications as well as sources of aeronautical information.

#### Air Traffic Control

Air traffic control is expanded to encompass areas of air traffic management.

#### Emergency and Abnormal Procedures

This new section addresses security; in particular, identifying, declaring, and reporting emergencies.

#### Practical Dispatch Applications

This section replaces the old practical dispatching section. Practical dispatch applications introduce the dispatch candidate to human factors as applied to decisionmaking, human error, and teamwork.

The "applied dispatching" subsection provides the student with methods of application for all previous subject matter.

To ensure that future technological advancements are taught, this appendix is linked to the PTS guide. The PTS is periodically revised, whereas regulatory

changes may not keep up with technological advancements.

#### Discussion of Comments

Five comments were received in response to Notice No. 98-14 (63 FR 55920; October 19, 1998). The comments were from: Airline Ground Schools (AGS); Academy Education Center (AEC), Inc; Timothy C. Antolovic, Dispatch Working Group Chairperson; Flight Control Academy (FCA); and Air Line Pilots Association, International (ALPA). All but AEC explicitly stated they supported the NPRM, although several commenters suggested minor revisions discussed more fully below. AEC did not state whether or not it supported the NPRM and submitted suggested revisions discussed more fully below.

**Section 61.51:** AEC stated that this section does not address certificate expiration, refresher training, bi-annual reviews, desk audits, etc.

**FAA Response:** Training and reviews are included in 14 CFR part 121. The FAA notes that dispatcher certificates do not expire, but they must be kept current in order to exercise the privileges of the certificate. The currency requirements are included in 14 CFR part 121.

**Section 61.53:** AEC recommended that if a candidate is under 23 years of age and passes the knowledge and practical exams, a form should be provided to officially record that the candidate is eligible for a certificate at age 23. In addition, AEC stated that limitations should be permitted to be placed on an individual's flight dispatcher certificate based on medical conditions. It also stated that guidelines should be provided regarding operating limitations.

**FAA response:** The FAA does not believe such a form should be required since knowledge test results are valid for 2 years. Regarding medical limitations on certificates, the FAA has determined that a dispatcher certificate should remain unrestricted. Medical limitations, such as those on pilot certificates, are not appropriate in the dispatcher environment.

**Section 65.55:** AEC suggested identifying FAA-Authorized ADX Computerized test.

**FAA Response:** The FAA does not intend to use specific terms such as the ADX computerized test in order to allow for changes in technology. In addition, "knowledge test" would encompass the ADX computerized test.

**Section 65.57:** AGS, while stating it was in agreement with the proposal, disagreed with excluding ATP-rated pilots who gained experience in other

than military or part 121 operations, as an air traffic controller, or as a flight service specialist. It stated that it would not discriminate between military experience (no FAA ATP certificate) and civilian ATP experience. AGS also suggested that foreign air carrier pilots operating under part 129 meet the minimum requirements for consideration of substitution of experience. It stated that such pilots are required to be dispatched by a licensed US dispatcher to or from the United States. Finally, AGS stated that any ATP-rated pilot can request a dispatcher checkride from an FAA Flight Standards District Office (FSDO) when he/she has passed the knowledge exam by simply recommending himself/herself. It stated that this procedure should not be changed.

In addition, AEC suggested changing the term "Administrator" to "FAA FSDO Administrator" in order to differentiate between the FAA administrator and Aircraft Dispatcher training school administrator.

FCA recommended that credit should be offered to all Canadian dispatchers who have completed the Transport Canada curriculum or that a bilateral agreement be established that would allow the knowledge testing to be waived for personnel of both the U.S. and Canada who have passed these tests in their respective countries. FCA also stated that a practical test could be given by an approved school or agency and upon satisfactory completion of the practical test, the license for either country would be issued.

**FAA Response:** Regarding AGS's concern that the proposal discriminates between experience gained in military operations and civilian ATP operations, the FAA finds that dispatch systems are not required under operations conducted under part 91 and part 135. Therefore, such experience does not offer the same level of experience regarding dispatchers as military operations or operations conducted under part 121.

Regarding AGS's suggestion that foreign air carrier pilots operating under part 129 meet the minimum requirements for consideration of substitution of experience, the FAA notes that part 129 does not require the use of aircraft dispatchers. Therefore, no change is being made from the proposal.

Regarding AGS's comment about allowing an ATP-rated pilot to request a dispatcher checkride from an FAA FSDO after passing the knowledge exam and recommending himself or herself, the FAA notes that it did not propose any change to this practice, as long as

the ATP-rated pilot meets the experience requirements of 65.57.

In response to AEC's suggestion to change the term "Administrator", the FAA notes that this is the term that is used throughout 14 CFR. The FAA needs to be consistent throughout our requirements. Therefore, the term "Administrator" remains in the rule language.

In addition, the FAA notes that FCA's comments regarding Canada are beyond the scope of this rulemaking.

**Section 65.61:** AEC recommended using the term "air carrier" instead of "course operator" in § 65.61(c). ALPA noted that the terminology "a minimum of 200 total course hours" is not clear whether it means "classroom hours" or could include other "hours" such as computer based training.

**FAA Response:** The term "course operator" is correct in this context since the course operator is conducting the course under 14 CFR part 65, not 14 CFR part 121. Regarding ALPA's comment, the FAA has changed the rule language from "a minimum of 200 total course hours" to "a minimum of 200 hours of instruction" to clarify that a portion of those hours could include hours from computer based training.

**Appendix A:** AGS suggested that Computerized Flight Plan training be specifically included.

**FAA Response:** The FAA finds that Computerized Flight Plan training is not appropriate to specifically include in general areas of knowledge, since most air carriers have their own sophisticated computerized flight planning system. Manual flight plan training is needed in part 65, appendix A, "Courses" to understand the general concepts of flight planning. Specific knowledge in individual carrier's computerized programs is gained through training required under part 121.

#### Paperwork Reduction Act

Sections 65.63 and 65.70 contain information reporting, recordkeeping, and 3rd party notification requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120-0648. No comments were received on this information collection submission. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

Section 65.63(a) requires that application for original approval of an aircraft dispatcher certification course or the renewal of approval of an aircraft dispatcher certification course must be made in writing to the Administrator; accompanied by two copies of the course outline required under § 65.61(b) for which approval is sought; accompanied by a description of the equipment and facilities to be used; and accompanied by a list of the instructors and their qualifications. This information is necessary for the FAA to evaluate the applicant's qualifications and compliance with the requirements of proposed subpart C of part 63.

Section 65.63(c) requires that application for renewal of an approved aircraft dispatcher certification course must be made within 30 days preceding the month the approval expires. This will allow the FAA time to review the course operator's performance and continued qualification for course approval.

Section 65.63(e) requires that a course operator who desires voluntary cancellation of an approved course must send a letter to the Administrator. This will provide the FAA with documentation showing the reason for the cancellation. After the course has been canceled, the operator is required to send any records to the FAA that the Administrator requests so that they will be available if needed.

Section 65.63(f) requires that 10 days after the date any change in ownership of the school occurs application is made for an appropriate amendment to the approval.

The FAA estimates the annual recordkeeping burden for § 65.63 to be 71 hours per year.

Section 65.70 requires that course operators keep a chronological log for 3 years of all instructors, subjects covered, and course examinations and results. In addition, the course operator must transmit to the Administrator, not later than January 31 of each year, a report for the previous year that lists the names of all students who graduated, together with the results of their aircraft dispatcher certification courses and the names of all the students who failed or withdrew, together with the results of their aircraft dispatcher certification courses or the reasons for their withdrawal. These requirements are necessary for the FAA to evaluate the quality of the course and the operator's compliance with part 65.

Section 65.70(b) requires the course operator to provide a written statement of graduation to each student who successfully completes the approved course. This requirement is necessary so

that the student has documentation of his or her qualification to serve as an aircraft dispatcher.

The FAA estimates the annual recordkeeping burden for § 65.70 compliance to be 1440 hours per year.

The annual reporting and recordkeeping burden for each aircraft dispatcher certification course operator has not changed as a result of this rulemaking. However, each aircraft dispatcher certification operator will be required to update the course curriculum and training outline, which will be a one time occurrence of up to 80 hours.

#### **Compatibility With ICAO Standards**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

#### **Regulatory Evaluation Summary**

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the final rule will generate benefits that justify its costs and is not "a significant regulatory action" as defined in the Executive Order or Department of Transportation Regulatory Policies and Procedures. The final rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. In addition, this final rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed \$100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

This rule amends existing regulations that define the qualification and certification requirements for aircraft

dispatchers. Current regulations prescribing these requirements do not reflect the significant technological advances that have occurred in the aviation industry and the enhancements in training and instructional methods that have affected all aircraft dispatchers.

The FAA has determined that the final rule has little effect on aviation industry costs, but results in minor cost savings for dispatcher schools by relieving them of the burden to retain records indefinitely. Additionally, the rule consolidates and clarifies eligibility, knowledge, experience, and skill requirements among aircraft dispatchers.

Ordinarily, a full regulatory evaluation of the potential monetary costs that would be imposed and benefits that would be generated is prepared for all FAA rulemaking actions. For this final rule, however, a full regulatory evaluation is unwarranted because little costs will be imposed on the U.S. aviation community. Thus, the FAA has not prepared a full regulatory evaluation for the docket.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule will impact entities regulated by Part 65. This final rule will not impose any additional costs on small entities covered by these changes to Part 65. Accordingly, the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### International Trade Impact Assessment

This final rule will not impose a competitive disadvantage to either U.S. air carriers doing business abroad or foreign air carriers doing business in the United States. This assessment is based on the fact that this rule will not impose any additional costs on the aviation industry. This final rule will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

#### Federalism Implications

The regulations herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### Energy Impact

The energy impact of this final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94-163, as amended (42 U.S.C. 6362). It has been determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

#### List of Subjects in 14 CFR Part 65

Air traffic controllers, Aircraft, Aircraft dispatchers, Airmen, Airports, Reporting and recordkeeping requirements.

#### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 65, Chapter I, Code of Federal Regulations, as follows:

#### PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

1. The authority citation for part 65 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

2. Subpart C of part 65 is revised to read as follows:

#### Subpart C—Aircraft Dispatchers

Sec.

- 65.51 Certificate required.
- 65.53 Eligibility requirements: General.
- 65.55 Knowledge requirements.
- 65.57 Experience or training requirements.
- 65.59 Skill requirements.
- 65.61 Aircraft dispatcher certification courses: Content and minimum hours.
- 65.63 Aircraft dispatcher certification courses: Application, duration, and other general requirements.
- 65.65 Aircraft dispatcher certification courses: Training facilities.
- 65.67 Aircraft dispatcher certification courses: Personnel.
- 65.70 Aircraft dispatcher certification courses: Records.

#### Subpart C—Aircraft Dispatchers

##### § 65.51 Certificate required.

(a) No person may act as an aircraft dispatcher (exercising responsibility with the pilot in command in the operational control of a flight) in connection with any civil aircraft in air commerce unless that person has in his or her personal possession an aircraft dispatcher certificate issued under this subpart.

(b) Each person who holds an aircraft dispatcher certificate must present it for inspection upon the request of the Administrator or an authorized representative of the National Transportation Safety Board, or of any Federal, State, or local law enforcement officer.

##### § 65.53 Eligibility requirements: General.

(a) To be eligible to take the aircraft dispatcher knowledge test, a person must be at least 21 years of age.

(b) To be eligible for an aircraft dispatcher certificate, a person must—

- (1) Be at least 23 years of age;
- (2) Be able to read, speak, write, and understand the English language;
- (3) Pass the required knowledge test prescribed by § 65.55 of this part;
- (4) Pass the required practical test prescribed by § 65.59 of this part; and
- (5) Comply with the requirements of § 65.57 of this part.

##### § 65.55 Knowledge requirements.

(a) A person who applies for an aircraft dispatcher certificate must pass a knowledge test on the following aeronautical knowledge areas:

- (1) Applicable Federal Aviation Regulations of this chapter that relate to airline transport pilot privileges, limitations, and flight operations;
- (2) Meteorology, including knowledge of and effects of fronts, frontal characteristics, cloud formations, icing, and upper-air data;

(3) General system of weather and NOTAM collection, dissemination, interpretation, and use;

(4) Interpretation and use of weather charts, maps, forecasts, sequence reports, abbreviations, and symbols;

(5) National Weather Service functions as they pertain to operations in the National Airspace System;

(6) Windshear and microburst awareness, identification, and avoidance;

(7) Principles of air navigation under instrument meteorological conditions in the National Airspace System;

(8) Air traffic control procedures and pilot responsibilities as they relate to enroute operations, terminal area and radar operations, and instrument departure and approach procedures;

(9) Aircraft loading, weight and balance, use of charts, graphs, tables, formulas, and computations, and their effect on aircraft performance;

(10) Aerodynamics relating to an aircraft's flight characteristics and performance in normal and abnormal flight regimes;

(11) Human factors;

(12) Aeronautical decision making and judgment; and

(13) Crew resource management, including crew communication and coordination.

(b) The applicant must present documentary evidence satisfactory to the administrator of having passed an aircraft dispatcher knowledge test within the preceding 24 calendar months.

##### § 65.57 Experience or training requirements.

An applicant for an aircraft dispatcher certificate must present documentary evidence satisfactory to the Administrator that he or she has the experience prescribed in paragraph (a) of this section or has accomplished the training described in paragraph (b) of this section as follows:

(a) A total of at least 2 years experience in the 3 years before the date of application, in any one or in any combination of the following areas:

(1) In military aircraft operations as a—

- (i) Pilot;
- (ii) Flight navigator; or
- (iii) Meteorologist.

(2) In aircraft operations conducted under part 121 of this chapter as—

(i) An assistant in dispatching air carrier aircraft, under the direct supervision of a dispatcher certificated under this subpart;

- (ii) A pilot;
- (iii) A flight engineer; or
- (iv) A meteorologist.



(3) In aircraft operations as—

- (i) An Air Traffic Controller; or
- (ii) A Flight Service Specialist.

(4) In aircraft operations, performing other duties that the Administrator finds provide equivalent experience.

(b) A statement of graduation issued or revalidated in accordance with § 65.70(b) of this part, showing that the person has successfully completed an approved aircraft dispatcher course.

#### **§ 65.59 Skill requirements.**

An applicant for an aircraft dispatcher certificate must pass a practical test given by the Administrator, with respect to any one type of large aircraft used in air carrier operations. The practical test must be based on the aircraft dispatcher practical test standards, as published by the FAA, on the items outlined in appendix A of this part.

#### **§ 65.61 Aircraft dispatcher certification courses: Content and minimum hours.**

(a) An approved aircraft dispatcher certification course must:

(1) Provide instruction in the areas of knowledge and topics listed in appendix A of this part;

(2) Include a minimum of 200 hours of instruction.

(b) An applicant for approval of an aircraft dispatcher course must submit an outline that describes the major topics and subtopics to be covered and the number of hours proposed for each.

(c) Additional subject headings for an aircraft dispatcher certification course may also be included, however the hours proposed for any subjects not listed in appendix A of this part must be in addition to the minimum 200 course hours required in paragraph (a) of this section.

(d) For the purpose of completing an approved course, a student may substitute previous experience or training for a portion of the minimum 200 hours of training. The course operator determines the number of hours of credit based on an evaluation of the experience or training to determine if it is comparable to portions of the approved course curriculum. The credit allowed, including the total hours and the basis for it, must be placed in the student's record required by § 65.70(a) of this part.

#### **§ 65.63 Aircraft dispatcher certification courses: Application, duration, and other general requirements.**

(a) *Application.* Application for original approval of an aircraft dispatcher certification course or the renewal of approval of an aircraft dispatcher certification course under this part must be:

(1) Made in writing to the Administrator;

(2) Accompanied by two copies of the course outline required under § 65.61(b) of this part, for which approval is sought;

(3) Accompanied by a description of the equipment and facilities to be used; and

(4) Accompanied by a list of the instructors and their qualifications.

(b) *Duration.* Unless withdrawn or canceled, an approval of an aircraft dispatcher certification course of study expires:

(1) On the last day of the 24th month from the month the approval was issued; or

(2) Except as provided in paragraph (f) of this section, on the date that any change in ownership of the school occurs.

(c) *Renewal.* Application for renewal of an approved aircraft dispatcher certification course must be made within 30 days preceding the month the approval expires, provided the course operator meets the following requirements:

(1) At least 80 percent of the graduates from that aircraft dispatcher certification course, who applied for the practical test required by § 65.59 of this part, passed the practical test on their first attempt; and

(2) The aircraft dispatcher certification course continues to meet the requirements of this subpart for course approval.

(d) *Course revisions.* Requests for approval of a revision of the course outline, facilities, or equipment must be in accordance with paragraph (a) of this section. Proposed revisions of the course outline or the description of facilities and equipment must be submitted in a format that will allow an entire page or pages of the approved outline or description to be removed and replaced by any approved revision. The list of instructors may be revised at any time without request for approval, provided the minimum requirements of § 65.67 of this part are maintained and the Administrator is notified in writing.

(e) *Withdrawal or cancellation of approval.* Failure to continue to meet the requirements of this subpart for the approval or operation of an approved aircraft dispatcher certification course is grounds for withdrawal of approval of the course. A course operator may request cancellation of course approval by a letter to the Administrator. The operator must forward any records to the FAA as requested by the Administrator.

(f) *Change in ownership.* A change in ownership of a part 65, appendix A-

approved course does not terminate that aircraft dispatcher certification course approval if, within 10 days after the date that any change in ownership of the school occurs:

(1) Application is made for an appropriate amendment to the approval; and

(2) No change in the facilities, personnel, or approved aircraft dispatcher certification course is involved.

(g) *Change in name or location.* A change in name or location of an approved aircraft dispatcher certification course does not invalidate the approval if, within 10 days after the date that any change in name or location occurs, the course operator of the part 65, appendix A-approved course notifies the Administrator, in writing, of the change.

#### **§ 65.65 Aircraft dispatcher certification courses: Training facilities.**

An applicant for approval of authority to operate an aircraft dispatcher course of study must have facilities, equipment, and materials adequate to provide each student the theoretical and practical aspects of aircraft dispatching. Each room, training booth, or other space used for instructional purposes must be temperature controlled, lighted, and ventilated to conform to local building, sanitation, and health codes. In addition, the training facility must be so located that the students in that facility are not distracted by the instruction conducted in other rooms.

#### **§ 65.67 Aircraft dispatcher certification courses: Personnel.**

(a) Each applicant for an aircraft dispatcher certification course must meet the following personnel requirements:

(1) Each applicant must have adequate personnel, including one instructor who holds an aircraft dispatcher certificate and is available to coordinate all training course instruction.

(2) Each applicant must not exceed a ratio of 25 students for one instructor.

(b) The instructor who teaches the practical dispatch applications area of the appendix A course must hold an aircraft dispatchers certificate

#### **§ 65.70 Aircraft dispatcher certification courses: Records.**

(a) The operator of an aircraft dispatcher course must maintain a record for each student, including a chronological log of all instructors, subjects covered, and course examinations and results. The record must be retained for at least 3 years after graduation. The course operator also



must prepare, for its records, and transmit to the Administrator not later than January 31 of each year, a report containing the following information for the previous year:

(1) The names of all students who graduated, together with the results of their aircraft dispatcher certification courses.

(2) The names of all the students who failed or withdrew, together with the results of their aircraft dispatcher certification courses or the reasons for their withdrawal.

(b) Each student who successfully completes the approved aircraft dispatcher certification course must be given a written statement of graduation, which is valid for 90 days. After 90 days, the course operator may revalidate the graduation certificate for an additional 90 days if the course operator determines that the student remains proficient in the subject areas listed in appendix A of this part.

3. Appendix A to part 65 is revised to read as follows:

#### **Appendix A to Part 65—Aircraft Dispatcher Courses**

##### *Overview*

This appendix sets forth the areas of knowledge necessary to perform dispatcher functions. The items listed below indicate the minimum set of topics that must be covered in a training course for aircraft dispatcher certification. The order of coverage is at the discretion of the approved school. For the latest technological advancements refer to the Practical Test Standards as published by the FAA.

##### **I. Regulations**

- A. Subpart C of this part;
- B. Parts 1, 25, 61, 71, 91, 121, 139, and 175, of this chapter;
- C. 49 CFR part 830;
- D. General Operating Manual.

##### **II. Meteorology**

- A. Basic Weather Studies
  - (1) The earth's motion and its effects on weather.
  - (2) Analysis of the following regional weather types, characteristics, and structures, or combinations thereof:
    - (a) Maritime.
    - (b) Continental.
    - (c) Polar.
    - (d) Tropical.
  - (3) Analysis of the following local weather types, characteristics, and structures or combinations thereof:
    - (a) Coastal.
    - (b) Mountainous.
    - (c) Island.
    - (d) Plains.
  - (4) The following characteristics of the atmosphere:
    - (a) Layers.
    - (b) Composition.
    - (c) Global Wind Patterns.
    - (d) Ozone.
    - (5) Pressure:
      - (a) Units of Measure.

- (b) Weather Systems Characteristics.
- (c) Temperature Effects on Pressure.
- (d) Altimeters.
- (e) Pressure Gradient Force.
- (f) Pressure Pattern Flying Weather.
- (6) Wind:
  - (a) Major Wind Systems and Coriolis Force.
  - (b) Jetstreams and their Characteristics.
  - (c) Local Wind and Related Terms.
- (7) States of Matter:
  - (a) Solids, Liquid, and Gases.
  - (b) Causes of change of state.
- (8) Clouds:
  - (a) Composition, Formation, and Dissipation.
  - (b) Types and Associated Precipitation.
- (c) Use of Cloud Knowledge in Forecasting.
- (9) Fog:
  - (a) Causes, Formation, and Dissipation.
  - (b) Types.
- (10) Ice:
  - (a) Causes, Formation, and Dissipation.
  - (b) Types.
- (11) Stability/Instability:
  - (a) Temperature Lapse Rate, Convection.
  - (b) Adiabatic Processes.
  - (c) Lifting Processes.
  - (d) Divergence.
  - (e) Convergence.
- (12) Turbulence:
  - (a) Jetstream Associated.
  - (b) Pressure Pattern Recognition.
  - (c) Low Level Windshear.
  - (d) Mountain Waves.
  - (e) Thunderstorms.
  - (f) Clear Air Turbulence.
- (13) Airmasses:
  - (a) Classification and Characteristics.
  - (b) Source Regions.
  - (c) Use of Airmass Knowledge in Forecasting.
- (14) Fronts:
  - (a) Structure and Characteristics, Both Vertical and Horizontal.
  - (b) Frontal Types.
  - (c) Frontal Weather Flying.
- (15) Theory of Storm Systems:
  - (a) Thunderstorms.
  - (b) Tornadoes.
  - (c) Hurricanes and Typhoons.
  - (d) Microbursts.
  - (e) Causes, Formation, and Dissipation.
- B. Weather, Analysis, and Forecasts
  - (1) Observations:
    - (a) Surface Observations.
    - (i) Observations made by certified weather observer.
    - (ii) Automated Weather Observations.
    - (b) Terminal Forecasts.
    - (c) Significant En route Reports and Forecasts.
      - (i) Pilot Reports.
      - (ii) Area Forecasts.
      - (iii) Sigmets, Airmets.
      - (iv) Center Weather Advisories.
      - (d) Weather Imagery.
        - (i) Surface Analysis.
        - (ii) Weather Depiction.
        - (iii) Significant Weather Prognosis.
        - (iv) Winds and Temperature Aloft.
        - (v) Tropopause Chart.
        - (vi) Composite Moisture Stability Chart.
        - (vii) Surface Weather Prognostic Chart.
        - (viii) Radar Meteorology.
        - (ix) Satellite Meteorology.
        - (x) Other charts as applicable.

- (e) Meteorological Information Data Collection Systems.
- (2) Data Collection, Analysis, and Forecast Facilities.
- (3) Service Outlets Providing Aviation Weather Products.
- C. Weather Related Aircraft Hazards
  - (1) Crosswinds and Gusts.
  - (2) Contaminated Runways.
  - (3) Restrictions to Surface Visibility.
  - (4) Turbulence and Windshear.
  - (5) Icing.
  - (6) Thunderstorms and Microburst.
  - (7) Volcanic Ash.

##### **III. Navigation**

- A. Study of the Earth
  - (1) Time reference and location (0 Longitude, UTC).
  - (2) Definitions.
  - (3) Projections.
  - (4) Charts.
- B. Chart Reading, Application, and Use.
- C. National Airspace Plan.
- D. Navigation Systems.
- E. Airborne Navigation Instruments.
- F. Instrument Approach Procedures.
  - (1) Transition Procedures.
  - (2) Precision Approach Procedures.
  - (3) Non-precision Approach Procedures.
  - (4) Minimums and the relationship to weather.
- G. Special Navigation and Operations.
  - (1) North Atlantic.
  - (2) Pacific.
  - (3) Global Differences.

##### **IV. AIRCRAFT**

- A. Aircraft Flight Manual.
- B. Systems Overview.
  - (1) Flight controls.
  - (2) Hydraulics.
  - (3) Electrical.
  - (4) Air Conditioning and Pressurization.
  - (5) Ice and Rain protection.
  - (6) Avionics, Communication, and Navigation.
  - (7) Powerplants and Auxiliary Power Units.
  - (8) Emergency and Abnormal Procedures.
  - (9) Fuel Systems and Sources.
- C. Minimum Equipment List/Configuration Deviation List (MEL/CDL) and Applications.
- D. Performance.
  - (1) Aircraft in general.
  - (2) Principles of flight:
    - (a) Group one aircraft.
    - (b) Group two aircraft.
  - (3) Aircraft Limitations.
  - (4) Weight and Balance.
  - (5) Flight instrument errors.
  - (6) Aircraft performance:
    - (a) Take-off performance.
    - (b) En route performance.
    - (c) Landing performance.

##### **V. Communications**

- A. Regulatory requirements.
- B. Communication Protocol.
- C. Voice and Data Communications.
- D. Notice to Airmen (NOTAMS).
- E. Aeronautical Publications.
- F. Abnormal Procedures.

##### **VI. Air Traffic Control**

- A. Responsibilities.
- B. Facilities and Equipment.
- C. Airspace classification and route structure.

- D. Flight Plans.
    - (1) Domestic.
    - (2) International.
  - E. Separation Minimums.
  - F. Priority Handling.
  - G. Holding Procedures.
  - H. Traffic Management.
  - VII. Emergency and Abnormal Procedures
    - A. Security measures on the ground.
    - B. Security measures in the air.
    - C. FAA responsibility and services.
    - D. Collection and dissemination of information on overdue or missing aircraft.
    - E. Means of declaring an emergency.
    - F. Responsibility for declaring an emergency.
    - G. Required reporting of an emergency.
    - H. NTSB reporting requirements.
  - VIII. Practical Dispatch Applications
    - A. Human Factors.
      - (1) Decisionmaking:
        - (a) Situation Assessment.
        - (b) Generation and Evaluation of Alternatives.
      - (i) Tradeoffs and Prioritization.
      - (ii) Contingency Planning.
    - (c) Support Tools and Technologies.
    - (2) Human Error:
      - (a) Causes.
      - (i) Individual and Organizational Factors.
      - (ii) Technology-Induced Error.
    - (b) Prevention.
    - (c) Detection and Recovery.
    - (3) Teamwork:
      - (a) Communication and Information Exchange.
  - (b) Cooperative and Distributed Problem-Solving.
  - (c) Resource Management.
    - (i) Air Traffic Control (ATC) activities and workload.
    - (ii) Flightcrew activities and workload.
    - (iii) Maintenance activities and workload.
    - (iv) Operations Control Staff activities and workload.
  - B. Applied Dispatching.
    - (1) Briefing techniques, Dispatcher, Pilot.
    - (2) Preflight:
      - (a) Safety.
      - (b) Weather Analysis.
        - (i) Satellite imagery.
        - (ii) Upper and lower altitude charts.
      - (iii) Significant en route reports and forecasts.
    - (iv) Surface charts.
    - (v) Surface observations.
    - (vi) Terminal forecasts and orientation to Enhanced Weather Information System (EWINS).
  - (c) NOTAMS and airport conditions.
  - (d) Crew.
    - (i) Qualifications.
    - (ii) Limitations.
  - (e) Aircraft.
    - (i) Systems.
    - (ii) Navigation instruments and avionics systems.
    - (iii) Flight instruments.
  - (iv) Operations manuals and MEL/CDL.
  - (v) Performance and limitations.
  - (f) Flight Planning.
    - (i) Route of flight.
1. Standard Instrument Departures and Standard Terminal Arrival Routes.
2. En route charts.
3. Operational altitude.
4. Departure and arrival charts.
  - (ii) Minimum departure fuel.
    - 1. Climb.
    - 2. Cruise.
    - 3. Descent.
  - (g) Weight and balance.
- (h) Economics of flight overview (Performance, Fuel Tankering).
- (i) Decision to operate the flight.
- (j) ATC flight plan filing.
- (k) Flight documentation.
  - (i) Flight plan.
  - (ii) Dispatch release.
- (3) Authorize flight departure with concurrence of pilot in command.
- (4) In-flight operational control:
  - (a) Current situational awareness.
  - (b) Information exchange.
  - (c) Amend original flight release as required.
- (5) Post-Flight:
  - (a) Arrival verification.
  - (b) Weather debrief.
  - (c) Flight irregularity reports as required.
- Issued in Washington, DC, on December 2, 1999.
- Jane F. Garvey,**  
*Administrator.*
- [FR Doc. 99-31707 Filed 12-7-99; 8:45 am]
- BILLING CODE 4910-13-P**

Registered  
Latter Day  
Saints

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Wednesday  
December 8, 1999

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**Part V**

**Department of  
Education**

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Office of Educational Research and  
Improvement; Fund for the Improvement  
of Education: Partnerships in Character  
Education Pilot Projects; Inviting  
Applications for New Awards for Fiscal  
Year 2000; Notice

**DEPARTMENT OF EDUCATION****[CFDA No.: 84.215V]****Office of Educational Research and Improvement; Fund for the Improvement of Education: Partnerships in Character Education Pilot Projects; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000**

*Purpose of Program:* The purpose of the Fund for the Improvement of Education (FIE) is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The purpose of this competition is to support pilot projects that design and implement character education programs as a way to address the broader FIE objectives.

*Eligible Applicants:* Only State educational agencies, in partnership with one or more local educational agencies, may apply for grants under this program.

The term "State educational agency" means the agency primarily responsible for the State supervision of public elementary and secondary schools (20 U.S.C. 8011 (28)).

The term "local educational agency" means—

(1) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) The term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(3) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs but only to the extent that such inclusion makes such school eligible for programs for which specific eligibility is not provided to such school in another provision of law and such school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that such school shall not be subject to the jurisdiction of any State educational

agency other than the Bureau of Indian Affairs (20 U.S.C. 8011 (18)).

*Applications Available:* 12/13/1999.

*Deadline for Receipt of Applications:* 02/11/2000.

We must receive all applications on or before this date. This requirement takes exception to the Education Department General Administrative regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Assistant Secretary for the Office of Educational Research and Improvement has determined that proposed rulemaking is not required.

*Deadline for Intergovernmental Review:* 4/11/2000.

*Available Funds:* Up to \$2,000,000.

*Estimated Range of Awards:*

\$100,000–\$1,000,000.

*Estimated Average Size of Awards:* \$350,000.

*Maximum Award:* We will reject an application that proposes a budget exceeding a total of \$1,000,000 for the entire project period.

*Estimated Number of Awards:* Up to 10.

*Budget Period:* 12 months.

*Project Period:* Up to 60 months.

**Note:** The Department is not bound by any estimates in this notice.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 98, and 99; and (b) The regulations in 34 CFR part 299.

**SUPPLEMENTARY INFORMATION:** The statute governing the Partnerships in Character Education Pilot Projects program limits the total amount awarded to any State to \$1,000,000 and the funding period to five years, of which not more than one year may be used for planning and program design. Each applicant, operating within these parameters, may, in designing character education activities, determine the combination of funds and time that is most appropriate. For example, one applicant may request \$500,000 per year for two years, another may request \$100,000 for the first year, \$400,000 for the second and third years, and \$100,000 for the fourth year, and a third may request \$200,000 per year for five years. In preparing your application, you should take special care to provide a timeline and a narrative that explains the costs requested for each budget

period. Under the Character Education program, State educational agencies provide technical and professional assistance to local educational agencies in the development and implementation of curriculum materials, teacher training, and other activities related to character education. You must propose projects designed to develop character education programs that incorporate the following elements of character:

- (a) Caring.
- (b) Civic virtue and citizenship.
- (c) Justice and fairness.
- (d) Respect.
- (e) Responsibility.
- (f) Trustworthiness.
- (g) Any other elements deemed

appropriate by the members of the partnership. Other program requirements are described in the application package.

**FOR FURTHER INFORMATION CONTACT:**

Beverly Farrar, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502J, Washington, DC 20208–5645. Telephone: (202) 219–1301. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**FOR APPLICATIONS CONTACT:** Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: <http://www.ed.gov/pubs/edpubs.html>

Or you may contact ED Pubs at its E-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov)

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.215V.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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**Program Authority:** 20 U.S.C. 8003.

Dated: December 3, 1999.

**C. Kent McGuire,**

*Assistant Secretary Office of Educational Research and Improvement.*

[FR Doc. 99-31775 Filed 12-7-99; 8:45 am]

**BILLING CODE 4000-01-P**

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